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Ethics Commission

January 13, 2003

(Approved 2/10/03)

Minutes of the Special Meeting of the San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 421
January 13, 2003, 5:30 p.m.

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I. Call to order and roll call.

Chairperson Paul Melbostad called the meeting to order at 5:30 p.m.

COMMISSION MEMBERS PRESENT: Paul H. Melbostad, Chairperson; Robert R. Planthold, Vice-Chairperson; Commissioner; Michael Garcia, Commissioner; Waukeen Q. McCoy, Commissioner. Commissioner Michele Anglade arrived at 5:40 p.m.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Oliver Luby, Fines Collection Officer.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney; Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Joe Lynn; Tess Ventresca; Michael Mooney; Eric Safire; Marc Salomon; Richard Knee; Anita Mayo, Pillsbury Winthrop; Ron Dudum; Fred Ridel, San Francisco Common Cause; Barry Hermanson; Kate Favetti, San Francisco Civil Service Commission; Donald Casper, San Francisco Civil Service Commission.

MATERIALS DISTRIBUTED:

Agenda for the Meeting of January 13, 2003

Executive Director's Report for the Meeting of January 13, 2003

Draft Minutes of the Special Meeting of December 16, 2002

Approved Minutes of the Special Meeting of November 15, 2002

Approved Minutes of the Special Meeting of November 21, 2002

January 9, 2003 memo from Executive Director Ginny Vida regarding Proposed Amendments to Section 1.122 of the CFRO, with attached December 11, 2002 letter from Executive Director Ginny Vida to Anita D. Stearns Mayo

January 9, 2003 memo from Executive Director Ginny Vida regarding Additional Amendments to the Campaign Finance Reform Ordinance

January 9, 2003 proposed draft amendments to the Campaign Finance Reform Ordinance

January 9, 2003 memo from Executive Director Ginny Vida regarding Conflict of Interest Proposals Adopted by Commission to Date

January 9, 2003 memo from Executive Director Ginny Vida regarding Conflict of Interest Provisions on Incompatible Activities

January 13, 2003 Reference Materials regarding Incompatible Activites

January 9, 2003 memo from Executive Director Ginny Vida regarding Conflict of Interest Provisions on Political Activities

December 11, 2002 memo from Executive Director Ginny Vida regarding examples of post-

employment restrictions in proposed amendments to Taxpayer Protection Amendment of 2000 (Prop J)

November 12, 2002 memo from Executive Director Ginny Vida regarding post-employment

restrictions

San Francisco Ethics Commission Annual Report, July 1, 2001-June 30, 2002

January 13, 2003 letter from Kate Favetti to the Ethics Commissioners

January 8, 2003 memo from Paul Ryan, Project Director of the Center for Governmental Studies, to Members, San Francisco Ethics Commission, regarding Penalties for Violations of San Francisco Campaign Finance Laws

January 13, 2003 web site article printout of "And that's the truth of that matter..." by Pat Murphy,

from www.sanfranciscosentinel.com

January 13, 2003 San Francisco Chronicle Letters to the Editor, one by Tom McManus and one by

David Looman, under "Public Comes First."

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Tess Ventresca submitted a written statement just before the meeting was called to order. Michael Mooney also submitted a written statement during the meeting.

Eric Safire, San Francisco attorney, commented on a letter to Joe Lynn from the Executive Director that Mr. Lynn regards as a reprimand for having disclosed information in violation of a policy of the Ethics Commission. Mr. Safire inquired whether the Ethics Commission policy on disclosure exists and, if so, where the policy originates and who approved the policy. He said that the policy will restrict the dissemination of public information and possibly violate the Sunshine Ordinance. He asked the Commission to take a position relative to the policy. Mr. Safire also provided a written statement from Mr. Lynn.

Marc Salomon, a former candidate, provided comment on the PG&E contributions that were reported after the November election in a filed report released by Mr. Lynn. Mr. Salomon said

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that no filing like this has ever occurred and that the filer of the late report could be liable for treble fines. He added that the late reporting of the $800,000 was not a mistake and requested vigorous enforcement. He requested "independent outside counsel and outside temporary acting directorship" because of the lack of "gumption for actually following and enforcing the laws" and bias towards the regulated community.

Richard Knee, a member of the San Francisco Sunshine Task Force, provided comment on behalf of himself. He said that "a number of us" are interested in the matter to which Mr. Safire referred. He asked that a copy of the Commission policy referred to by Mr. Safire be sent to him.

Ron Dudum said that the professionalism of Mr. Lynn was second to none. He said that he was astonished that Mr. Lynn had been reprimanded and that the Executive Director should be "questioned in a serious way." Mr. Dudum further noted that in the past, if information was public Lynn released it, and that if information was not public, Lynn did not release it.

Barry Hermanson said he echoed the support expressed for Mr. Lynn.

[Because Chair Melbostad planned to leave by 6:30 p.m. due to another appointment, the Commission moved directly to Agenda item VI and continued items III, IV and V.]

III. Discussion and possible action re: Approval of the minutes of the Ethics Commission meeting of December 16, 2002.

The Commission continued discussion of this item.

IV. Executive Director's Report.

The Commission continued discussion of this item.

V. Discussion re: Comments from candidates and other members of the public evaluating the limited public financing program for supervisorial candidates in the November 2002 election and the December 2002 runoff election.

The Commission continued discussion of this item.

VI. Discussion and possible action re: Proposed amendments to the Campaign Finance Reform Ordinance (CFRO) based on the Commission's experience and public comments received regarding implementation of the City's new limited public financing program; proposed amendments to CFRO section 1.122(c); and consideration of whether to forward approved amendments to the Board of Supervisors.

Referring first to staff's January 9, 2003 memo on proposed amendments to Section 1.122 of the CFRO, Executive Director Ginny Vida noted that staff had provided an alternative proposal, as requested by the Commission at its earlier meeting. The alternate proposal would require committees to terminate and would not require attribution of contributions when those contributions are transferred from one committee to another. Ms. Vida stated that staff still recommended that transferred contributions be attributed because a transfer without attribution violates the intent of the Campaign Finance Reform Ordinance in restricting contributions to $500 per contributor in the general election. Staff noted that the alternate proposal provides committees less flexibility because it prohibits the raising of funds for officeholder expenses.

Commissioner Michael Garcia stated that the LIFO and FIFO methods recommended by staff are confusing and subject to abuse. Ms. Vida noted that if the staff recommendation were adopted, committees would still have the option of terminating their old committee and starting a new one. Commissioner Garcia suggested that it would be better if candidates were required to shut down an old committee and start a new one if necessary. Chairperson Melbostad suggested that unused contributions be returned to contributors.

Anita Mayo of Pillsbury Winthrop stated that the proposal was very confusing and referred to her request for advice. In response to questioning, she stated that requiring termination of committees would be all right so long as committees were given a reasonable amount of time to pay off their past debts.

Ron Dudum, a candidate for the Board of Supervisors in 2000 and 2002, stated that he still had debts from both races and that he was not able to close off his 2000 committee during the 2002 campaign. He urged caution with regard to mandatory committee termination, suggesting a period of five years before requiring termination. He noted that the only reason one should be able to keep a committee open is to recoup debt, especially if the debt is personal.

Fred Ridel of San Francisco Common Cause stated that attribution is very important and that it is in the public interest to trace money as it is transferred. Commissioner Garcia said he was in agreement if surplus funds are permitted to be rolled over, but noted that the issue is whether committees should be kept open.

After the public comment, Commissioner Robert Planthold said that the portion of the staff memo on p. 3 reading "this amendment would merely make this requirement explicit" persuaded him to support the staff proposal. Commissioner Waukeen McCoy noted that he was concerned about the rights of contributors, and the effect of the recommended proposal on their rights.

Motion 03-1-13-1 (Planthold/Garcia): Moved, seconded, and passed on a vote of 4-1 (Commissioner McCoy opposing): that the staff's recommendations on Section 1.122 of the CFRO be approved.

With respect to the remaining proposed amendments to the CFRO set forth in a second January 9, 2003 memo, Chairperson Melbostad asked the members to identify specific proposals for discussion. Ms. Vida referred the Commission to staff's proposals regarding section 1.130, which sets forth the dollar amounts of the spending limits for various City elective offices, as adjusted recently by changes in the Consumer Price Index. Ms. Vida suggested possibly raising the limits for the Board of Supervisor races from $83,000 to $90,000, because that would make the limits for the Board of Supervisors the same as the College and School Boards, as was the case prior to the CPI changes.

Chairperson Melbostad noted that the Board of Supervisors races are different from the others. Stating that the Commission had extensive public comment before adopting the limits for the Board of Supervisors and that it was not certain whether the City would implement Instant Runoff Voting (IRV) in time for the next election, he said that he was disinclined to support raising the limits to $90,000.

Barry Hermanson, a former Board of Supervisors candidate for District 4, testified that he spent around $50,000 during his race in fall 2002. He said that he decided not to spend any money on direct mail, since postage costs are huge; instead, his campaign walked pieces out and were able to cover the entire district three times. Mr. Hermanson said that the amount of money he spent was enough to get his message out. He said that $75,000 was appropriate for the Board of Supervisors, though he noted that a cost of living adjustment might be OK. Mr. Hermanson also testified that the automatic lifting of the spending cap in the runoff election was disturbing. He explained that in one district the two candidates who made it to the runoff had agreed to the spending cap; it was a third candidate who caused it to be lifted during the general election. He said that the spending cap should have remained in effect during the runoff since the two candidates had agreed to abide by it.

Motion 03-1-13-2 (Planthold/Garcia): Moved, seconded, and passed unanimously: that the package of recommended proposed amendments to CFRO, not including sections 1.130, 1.144 and 1.154, be adopted.

[Chairperson Melbostad left during the subsequent discussion. Vice Chair Planthold served as Chair for the remainder of the meeting.]

Before returning to section 1.130, the Commission next discussed proposed amendments to CFRO sections 1.144 and 1.154. Commissioner Planthold explained that the changes to these sections were technical in nature based on changes in section 1.142, which allows candidates additional time to submit applications to participate in public financing. Currently, candidates must submit applications by the deadline for filing nomination papers; proposed section 1.142 gives them almost three additional weeks to file. Under current law, the Commission must determine within 15 days of the deadline for filing nomination papers whether pro-ration of public funds is necessary. If the proposed amendments are approved, the Commission would not be able to make this determination because the deadline for filing applications for public funding would not have occurred. The proposed changes call for the Executive Director to make an initial determination of whether pro-ration is necessary, authorize the Commission to distribute funds on a pro-rata basis if necessary, and change the deadline for the Commission to make a final determination of pro-ration to 60 days before the election.

Mr. Ridel testified that the changes proposed by these amendments were practical.

Motion 03-1-13-3 (Garcia/Anglade): Moved, seconded, and passed unanimously (4-0, Melbostad absent): that staff's recommended amendments to CFRO sections 1.144 and 1.154 be accepted.

Returning to section 1.130, Ms. Vida said that if the spending limit for the Board of Supervisors were not changed, candidates for the Board would have a lower spending limit than any other office in the City. Commissioner Planthold replied that other City offices are citywide while the Board is district-wide. The Commission further discussed the CPI formula, the dates at which the limits for the different races were established, the intent of the limits, and public comment about the limits that was expressed at the last meeting.

Michael Mooney testified that he was concerned about raising the spending limits and recommended accepting the $83,000 limit for the Board of Supervisors. He noted that he had helped run the campaign to adopt the public financing program and said that the measure passed because people are very concerned about the amount of money being spent on campaigns.

Mr. Mooney also urged caution about a staff proposal that qualifying contributions for public financing can be as much as $500 and suggested a $250 maximum as a compromise. Ms. Vida noted that candidates must still obtain 75 contributions in order to qualify. Mr. Mooney said that he understood this but that, if the $500 proposal were adopted, a candidate could qualify if he or she got a dozen $500 contributions and around 65 or so smaller contributions. He suggested that this proposal would give people with money greater influence.

Motion 03-1-13-4 (McCoy/Anglade): Moved, seconded, and passed unanimously (4-0, Melbostad absent): that the draft proposed amendments to CFRO section 1.130 be amended to change the $90,000 figure to $83,000 for the Board of Supervisors.

Motion 03-1-13-5 (McCoy/Garcia): Moved, seconded, and passed unanimously (4-0, Melbostad absent): that the draft proposed amendments to CFRO section 1.130 be adopted as amended.

Motion 03-1-13-6 (McCoy/Garcia): Moved, seconded, and passed unanimously (4-0, Melbostad absent): that the proposed amendments to CFRO, as amended, be referred to the Board of Supervisors.

VII. Discussion and possible action re: Review of San Francisco's conflict of interest laws applicable to City officers and employees, including provisions related to post-employment restrictions (Charter sections 15.100, 15.108 and C8.105(e) and (l) and Campaign and Governmental Conduct Code section 3.700 et seq.), incompatible activities (Charter sections C81.05(g) and (f), Campaign and Governmental Conduct Code sections 3.200 and 3.300, and Charter section 15.106 and new staff proposals), and political activities (Campaign and Governmental Conduct Code section 3.400 and Charter sections 13.103.5, 15.100 and 6.102).

A. Incompatible Activities.

Kate Favetti, Executive Officer of the Civil Service Commission, stated that it is important that the Ethics Commission is addressing the issue of incompatible activities. She recommended that, as the Commission considers requiring departments to make a list of prohibited activities, that the rules adopted be broad enough to capture categories of incompatible activities that may be caused by changes in technology and other future changes. She urged the Commission not to adopt rules that might inadvertently undo existing department rules that are more stringent than what the Ethics Commission proposes. Additionally, she urged caution in making changes to the Charter, particularly in giving rights to at-will employees that do not exist at this time.

Donald Casper, Commissioner and President of the Civil Service Commission, testified about the need to preserve certain language in section C8.105(g) with respect to the Civil Service Commission. He asked that, similar to the recommendations regarding moving the language to respective Charter sections related to the Fire and Police Commissions, that the Ethics Commission recommend moving the language to section 10.101 and permit the Civil Service Commission to determine what that Charter language means. Commissioner Casper also stated that a central body is needed to coordinate the lists of incompatible activities so that different departments would not, in creating lists of their department's incompatible activities, create different systems of jurisprudence resulting in inconsistent policies for the same kinds of incompatible activities.

Commissioner Planthold asked Ms. Favetti and Mr. Casper to forward any Civil Service Commission suggestions on this matter to the Ethics Commission staff.

B. Post-employment Restrictions.

The Commission next discussed post-employment restrictions, beginning with general post-employment restrictions. Regarding Option 1 to prohibit communications to influence, whether or not compensated, the Commissioners suggested replacing the phrase "any oral or written communication" with "oral, written, or other communication" under proposed subsection (A)(1). After much discussion about the differences between the proposed permanent and one-year post-employment bans, Commissioner Garcia moved that Option 1 of staff's proposal be adopted. The motion died for lack of a second.

Mr. Ridel testified that post-employment restrictions are an important ethics issue and said he supported Option 1. He said that it is very easy for former employees to obtain benefits from using their former City employment, even if they are not directly compensated. He also said that the post-employment restrictions are not overly restrictive.

Commissioner McCoy stated that Option 1 was too broad and ambiguous but that he might support Option 2, which prohibits communications to influence only where the activity was compensated. In response to Commissioner Anglade's remarks about the permanent ban, Deputy Executive Director Mabel Ng noted that the proposed ban tracked state law. Commissioner Garcia said that the permanent ban applied only to specific issues with which a former City official or employee had worked. The Commission discussed hypothetical examples under Option 1. Commissioner McCoy asked if there were problems associated with former employees unduly influencing City departments. Commissioner Michele Anglade said that there was a lack of clarity regarding Option 1. Commissioner Planthold asked the commissioners to communicate individually their concerns to staff, and the Commission deferred this discussion until the next meeting.

The Commissioners decided to defer consideration of Charter sections 15.100 and 15.101 related to post-employment provisions affecting the Ethics Commission because they were related to the general post-employment restrictions that were deferred.

The Commission briefly discussed the proposal to move current section 15.108, related to post-employment restrictions applicable to the Mayor and Board of Supervisors, to a general section on post-employment restrictions.

Motion 03-1-13-7 (McCoy/Garcia & Anglade): Moved, seconded, and passed unanimously (4-0, Melbostad absent): that the proposed amendment to move Charter Sec. 15.108 to a general post-employment restriction section be adopted.

The Commission next discussed staff's proposal regarding (a) changing the ban against lobbying by former Board of Supervisors members from two years to one year, and (b) adding the Mayor to the post-employment ban on lobbying. Commissioner McCoy asked why the Mayor should be added. Ms. Ng noted that the lobbying ban was originally proposed by the Board of Supervisors because of its influence and that the Mayor has just as much influence if not more. She also said that the reduction in the ban from two years to one was for consistency. Commissioner Planthold asked why offices such as the City Attorney, District Attorney, and Treasurer were not also added to the lobbying ban. Deputy City Attorney Chad Jacobs noted that the original legislation approved by the Board was passed because of the broad budget authority of the Board of Supervisors. Commissioner Anglade questioned whether adding other offices to the lobbying ban would be good. Commissioner Planthold said that the Mayor has more appointment authority than any other office and that it could be a problem if he lobbied his own appointments thirteen months after leaving office. Commissioner Anglade noted that a year-long ban would probably not be overly harmful to former officials but also pointed out that a highly influential official would probably stay influential for more than a year after leaving office.

Mr. Ridel testified that offices with appointment authority have a lot of influence, the Mayor in particular. He said that a restriction on post-employment lobbying by members of the Board of Supervisors should logically apply to the Mayor.

In response to Commissioner Garcia's question about which offices have appointment power, the members noted that besides the Mayor, the President of the Board of Supervisors, the Assessor, the Treasurer, the District Attorney, the City Attorney, and the Public Defender have such authority. Commissioner Garcia said that the lobbying ban should apply to any office with appointment authority. Ms. Ng noted that most of these offices only made two appointments and the Board of Supervisors' and Mayor's potential for undue influence was due to their budget authority. Commissioner McCoy disagreed that the lobbying ban should apply to any office with appointment authority.

Commissioner Garcia moved that the staff proposal on changes to the ban on post-employment lobbying be amended to include any office with appointment authority. The motion failed for lack of a second.

Commissioner McCoy moved that the staff proposal on changes to the ban on post-employment lobbying be amended to delete the addition of the Mayor. The motion failed for lack of a second.

Commissioner Garcia moved that the staff proposal on changes to the ban on post-employment lobbying by former members of the Board of Supervisors and the Mayor be adopted. The motion failed for lack of a second. The Commission decided to continue discussion of the proposals at its next meeting.

The Commissioners next discussed the staff proposals related to post-employment provisions of Proposition J. Staff recommended Option 1. Commissioner Anglade said that while the options were well thought out, the word "pursuing," as used in Option 1, was overly broad.

Motion 03-1-13-8 (Anglade/Garcia): Moved, seconded, and passed unanimously (4-0, Melbostad absent): that Option 1 under "Negotiating future employment" in the proposed amendments to the post-employment restrictions under the Taxpayer Protection Amendments of 2000 (Prop J) be amended to delete the word "pursuing."

Motion 03-1-13-9 (Anglade/ Garcia): Moved, seconded, and passed unanimously (4-0, Melbostad absent): that Option 1 under "Negotiating future employment" in the proposed amendments to the post-employment restrictions under the Taxpayer Protection Amendments of 2000 (Prop J), as amended, be adopted.

The Commission next discussed the employment of former City employees.

Motion 03-1-13-10 (Garcia/Anglade): Moved, seconded, and passed unanimously (4-0, Melbostad absent): that Option 1 under "Employment of Former City Officers or Employees" in the proposed amendments to the post-employment restrictions under the Taxpayer Protection Amendments of 2000 (Prop J) be adopted.

C. Political Activity.

The Commission continued discussion of this matter to the next meeting.

VIII. Discussion and possible action re: Items for future agendas.

Commissioner Anglade requested that the Commission put on its agenda a discussion of the issues related to Joe Lynn that members of the public had addressed. Commissioner Planthold noted that the matter, as it appears in the news, seems to be a personnel matter in which the Commissioners may not interfere. The Commissioners discussed whether they could discuss the matter in a closed session. Commissioner Anglade noted that, to the extent that the Joe Lynn matter concerned the disclosure of public records, the Commission could address the matter.

The Commissioners also discussed the process and structure for putting items on the agenda. Commissioner Planthold noted this could involve a by-laws change, which would require greater public notice. Commissioner Planthold, as acting chair, asked Commissioner McCoy to prepare a recommendation on a by-laws change regarding the way in which items are placed on the agenda.

Commissioner Garcia stated that the San Francisco Chronicle article (see "Ethics boss raps worker for revealing PG&E error," SF Chronicle, January 10, 2003; the "Public Comes First" Letters to the Editor in the Materials Distributed), especially Paul Ryan's comments, must be addressed because it gives the Commission a bad image. He also asked that Paul Ryan's memorandum to the Commission be addressed. Commissioner Planthold said that he would ask Chairperson Melbostad to write a response to the Chronicle before the next Commission meeting.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Ridel said that, while not aware of the specific details in the matter related to Mr. Lynn, he thought the Commission should address the public disclosure issue. He added that he found Mr. Lynn to have a high level of integrity and competence.

X. Adjournment.

The meeting was adjourned at 8:49 p.m.

Respectfully submitted,

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Oliver Luby

Fines Collection Officer

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
AND AGENDA

Monday, January 13, 2003, 5:30 P.M.

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Discussion and possible action re: Approval of the minutes of the Ethics Commission meeting of December 16, 2002.**

IV. **Executive Director's report**
1. **Budget Update**
2. **Implementation of limited public financing program**
3. **Legislative developments**
4. **Advice and opinions**
5. **Investigation and enforcement program**
6. **Campaign finance disclosure program**
7. **Electronic filing program**
8. **Campaign finance audit program**
9. **Lobbyist program**
10. **Campaign consultant program**
11. **Statements of Economic Interests**
12. **Sunshine Ordinance Declarations**

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V. **Discussion re: Comments from candidates and other members of the public evaluating the limited public finance program for supervisorial candidates in the November 2002 general election and the December 2002 runoff election.**

VI. **Discussion and possible action re: Proposed amendments to the Campaign Finance Reform Ordinance (CFRO) based on the Commission's experience and public comments received regarding implementation of the City's new limited public financing program; proposed amendments to CFRO section 1.122(c); and consideration of whether to forward**

approved amendments to the Board of Supervisors. A staff report and revised draft legislation will be available on Thursday, January 9 from the Commission office and its web site.

VII. Discussion and possible action re: Review of San Francisco's conflict of interest laws applicable to City officers and employees, including provisions related to post-employment restrictions (Charter sections 15.100, 15.108 and C8.105(e) and (l) and Campaign and Governmental Conduct Code section 3.700 et seq.), incompatible activities (Charter sections C8.105(g) and (f), Campaign and Governmental Conduct Code sections 3.200 and 3.300, and Charter section 15.106 and new staff proposals), and political activities (Campaign and Governmental Conduct Code section 3.400 and Charter sections 13.103.5, 15.100 and 6.102). A staff report on post-employment restrictions is available from the Commission office and its web site. A staff report on incompatible activities and political activities will be available from the Commission office and its web site on Thursday, January 9.

VIII. Discussion and possible action re: Items for future agendas.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

X. Adjournment.

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The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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Ethics Commission

30 Van Ness Ave., Suite 3900
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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
AND AGENDA

Monday, February 10, 2003, 4:00 P.M. – 5:15 P.M.*

Room 421 City Hall*
1 Dr. Carlton B. Goodlett Place, San Francisco

***Please note change in time and room number. (This special meeting will precede the Commission's regular monthly meeting to be held at 5:30 p.m. in Room 408 City Hall.)**

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Discussion with international visitors concerning governmental ethics. The Commission will meet with 18 dignitaries from 17 countries to discuss accountability and ethics in the public sector, including the Ethics Commission's role in training public officials and employees.**

IV. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

V. **Adjournment.**

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Donna_Halt@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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Ethics Commission >> Meeting Information

Ethics Commission

February 10, 2003 (Special Meeting)

(Approved 3/10/03)

Minutes of the Special Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 421

February 10, 2003, 4:00 p.m.

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I. Call to order and roll call.

Chairperson Paul Melbostad called the meeting to order at 4:15 p.m.

COMMISSION MEMBERS PRESENT: Paul H. Melbostad, Chairperson; Robert R. Planthold, Vice-Chairperson; Commissioner; Michael Garcia, Commissioner; Waukeen Q. McCoy, Commissioner. Commissioner Michele Anglade was absent.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Grace Chau, Public Finance Auditor.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney; Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: John Zins, U.S. State Department; Norman Skougstad, U.S. State Department;

18 dignitaries from 17 countries:

Murat Laccintas, Turkey

Rodel A. Cruz, Philippines

Nadia Rasheed, Pakistan

Jeremy Fiawoyife, Ghana

John. S. Toguata, Papua New Guinea

Charles O. Moyela, Nigeria

Jorge Oztos, Mexico

Sergio Navarro, Bolivia

Mirsad Bajtarevic, Bosnia and Herzegovina

AuGuste Namupala Taanyanda, Namibia

Percival O. Flores, Philippines

Earl Sabajo, Suriname

Lee Kah Choon, Malaysia

Auwrius Skaistys, Lithuania

Kekobad Patel, Mozambique

Victor Nxumalo, Swaziland

Clifford R M Roberts, Sierra Leone

MATERIALS DISTRIBUTED:

Manual on Governmental Ethics Laws: A Guide to State and Local Laws Governing the Conduct of Public Officials and Employees

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

III. Discussion with international visitors concerning governmental ethics. The Commission will meet with 18 dignitaries from 17 countries to discuss accountability and ethics in the public sector, including the Ethics Commission's role in training public officials and employees.

Chairperson Melbostad welcomed the dignitaries from the 17 countries, each of whom introduced himself or herself. He briefed the visitors about the Commission's establishment, jurisdiction and duties. He noted that the five Commission members are appointed by five different City authorities and serve for a fixed term.

The Commissioners answered the visitors' questions regarding the Commission's jurisdiction and authority concerning campaign finance laws, disclosure requirements, conflict of interest laws, assessment of fines, the complaint process and the Commission's enforcement power. The visitors were given a general idea of the Commission's role and function, the Commission's authority in amending the ethics laws to prevent loopholes and corruption in city government, how complaints are handled, how investigations are conducted, how different levels of penalties apply to various violations, how the City's partial public financing program helps candidates for Board of Supervisors to defray the costs of election campaigns, and what challenges the Commission faces in times of budget crisis.

Chairperson Melbostad invited the visitors to attend the Commission's regular meeting, which was scheduled to occur after the special meeting.

IV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

V. Adjournment.

The meeting was adjourned at 5:15 p.m.

Respectfully submitted,

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Grace Chau

Public Finance Auditor

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
AND AGENDA

Monday, February 10, 2003, 5:30 P.M.

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Discussion and possible action re: Approval of the minutes of the Ethics Commission meetings of December 16, 2002 and January 13, 2003.

IV. Executive Director's report
1. Budget Update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach

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V. Discussion and possible action re: Commission policy on responding to inquiries from the public concerning public documents filed with the Ethics Commission.

VI. Discussion and possible action re: Approval of proposed Ethics Commission budget for FY 03-04. A copy of the proposed budget will be available from the Commission office and its web site on Friday, February 7.

VII. Discussion and possible action re: Review of San Francisco's conflict of interest laws applicable to City officers and employees, including provisions related to post-employment

restrictions (Charter sections 15.100, 15.108 and C8.105(e) and (l) and Campaign and Governmental Conduct ("C&GC") Code section 3.700 et seq.), incompatible activities (Charter sections C8.105(g) and (f), C&GC Code sections 3.200 and 3.300, and Charter section 15.106 and new staff proposals), and political activities (C&GC Code section 3.400 and Charter sections 13.103.5, 15.100 and 6.102). Staff reports on post-employment restrictions, incompatible activities and political activities are available from the Commission office and its web site.

VIII. Discussion and possible action re: Whether the Commission should propose increasing the annual registration fees, the pro-rated initial registration fees, and the late filing fee for lobbyists imposed by C&GC Code sections 2.110 and 2.145. A staff report will be available from the Commission office and its web site on Thursday, February 6.

IX. Discussion and possible action re: Items for future agendas.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XI. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 3

XII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XIII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact Donna Hall, Sunshine Ordinance Task Force, City Hall, Room 409, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724; Fax: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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Ethics Commission >> Meeting Information

Ethics Commission

February 10, 2003

(Approved 3/10/03)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

February 10, 2003, 5:30 p.m.

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I. Call to order and roll call.

Chairperson Paul Melbostad called the meeting to order at 5:30 p.m. He announced that 18 dignitaries from 17 countries were in attendance at this meeting. Their visit was organized through the international visitors program of the U.S. State Department.

COMMISSION MEMBERS PRESENT: Paul H. Melbostad, Chairperson; Robert R. Planthold, Vice-Chairperson; Commissioner; Michael Garcia, Commissioner; Waukeen Q. McCoy, Commissioner. Commissioner Michele Anglade was excused.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shannon Hardin, Ethics Investigator/Legal; Joe Lynn, Campaign Finance Officer; Grace Chau, Public Finance Auditor.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney; Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Margaret Ropchan; Eric Safire; Richard Knee; Dawn Kamalanathan, Budget Analyst of the Mayor's Office; Anita Mayo, Pillsbury Winthrop; Kate Favetti, San Francisco Civil Service Commission; 18 dignitaries from 17 countries (see list in minutes of February 10, 2003 special meeting).

MATERIALS DISTRIBUTED:

Agenda for the Meeting of February 10, 2003

Executive Director's Report for the Meeting of February 10, 2003

Draft Minutes of the Special Meeting of December 16, 2002

Draft Minutes of the Special Meeting of January 13, 2003

February 7, 2003 memo from Executive Director Ginny Vida regarding FY 03-04 budget

proposal

February 6, 2003 memo from Executive Director Ginny Vida regarding approved post-employment restrictions

February 10, 2002 memo from Executive Director Ginny Vida regarding post-employment restrictions

January 9, 2003 memo from Executive Director Ginny Vida regarding conflict of interest provisions on incompatible activities

January 13, 2003 Reference Materials regarding incompatible activities

January 9, 2003 memo from Executive Director Ginny Vida regarding Conflict of Interest Provisions on Political Activities

January 13, 2003 letter from Kate Favetti to the Ethics Commissioners

February 6, 2003 memo from Kate Favetti to Executive Director Ginny Vida regarding conflict of interest/gifts (proposed amendment to Charter Section C8.105)

February 10, 2003 Notice of Civil Service Commission Action from Gloria Sheppard to Ginny Vida/Mabel Ng

February 4, 2003 memo from Executive Director Ginny Vida regarding proposed amendments to the Lobbyist Ordinance

February 6, 2003 San Francisco Chronicle Letters to the Editor, "Ethics Panel Responds" by Paul Melbostad

February 6, 2003 memo from Deputy Executive Director Mabel Ng regarding Letter to the Editor/Bay Guardian

February 10, 2003 web site article printout of "Newsom disclosure flap" by Chronicle staff writers Lance William, Chuck Finnie and Rachel Gordon from www.sfgate.com

February 10, 2003 web site article printout of "Report calls for wider use of city campaign finance law" by Michael Cooper from www.nytimes.com

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Margaret Ropchan, a resident, voter and taxpayer, asked the Commission why Joe Lynn had been reprimanded for doing his job of releasing public information. She advised the Commission that Mr. Lynn had been awarded the James Madison award for investigative journalism, and requested that any evidence of the reprimand be removed from Mr. Lynn's personnel file.

Eric Safire, San Francisco attorney representing Mr. Lynn, stated that the facts regarding the reprimand letter must be ferreted out. He said that the Commission should make a decision whether a hearing should be held, take action, and then move on.

III. Discussion and possible action re: Approval of the minutes of the Ethics Commission meeting of December 16, 2002 and January 13, 2003.

Motion 03-2-10-1 (Garcia/Planthold): Moved, seconded, and passed unanimously: that the minutes of the Ethics Commission meeting of December 16, 2002 be approved as drafted.

Motion 03-2-10-2 (Garcia/McCoy): Moved, seconded, and passed unanimously: that the minutes of the Ethics Commission meeting of January 13, 2003 be approved as drafted.

IV. Executive Director's Report.

Executive Director Ginny Vida referred the Commission to her written report. Commissioner Robert Planthold stated that it would help the Commission's budget in terms of revenues if Long Beach licenses the On Line Filing System. He asked staff to find out the time frame and budget parameter for such licensing. Ms. Vida informed the Commission that Long Beach is also considering Los Angeles' electronic filing system and will not be making a decision until it reviews that system.

Commissioner Planthold pointed out a discrepancy in the numbers reported under collection of fines in item 6 of the report and asked for staff's clarification.

The budget instructions for the Commission include a 3 percent reduction of the current budget, a 10 percent cut in next year's budget, and an additional 10 percent contingency cut. Ms. Vida noted that the budget proposal presented to the Commission today reflects only a 10% reduction. The proposal for the additional 10% contingency reduction will be developed after today's meeting. Chairperson Melbostad thanked Commissioner McCoy for assisting and reviewing the budget proposal.

V. Discussion re: Commission policy on responding to inquiries from the public concerning public documents filed with the Ethics Commission.

Ms. Vida stated that this agenda item grew out of a personnel action, on which she will not comment. She said that there is a misimpression by some members of the public that the Commission is reluctant to provide documents that are public. She stated that that is not the case at all. She explained that the Commission takes seriously its obligation to provide public information under the Sunshine Ordinance and Public Records Act. The Commission has two roles: it serves as a repository of public information and as an enforcement agency. As a repository, the Commission makes public documents available to the public. The Commission has a public documents room where records are made available to the public. It also has a computer that members of the public can use to search the electronic databases. The Commission also compiles reports from lobbyists and campaign consultants and makes these available.

Ms. Vida explained that the Commission is also an enforcement agency. The Charter requires that documents and other issues pertaining to investigations and enforcement actions remain confidential unless there is a finding of probable cause or a settlement, at which time the matter will be disclosed at a public meeting. Under the Charter, any Commission member or employee who discloses confidential information may be dismissed for official misconduct. The Charter also requires the Commission to remain politically neutral: members and staff may not engage in certain political activities in order that the Commission not be used as a tool of any special interest. The Commission must be perceived as politically neutral, and staff must provide public documents in a neutral and even-handed way and avoid disclosing documents that pertain to investigations.

Ms. Vida recounted that at the last meeting an assertion had been made that staff must ask the Executive Director before releasing any documents. That is not true. If members of the public request documents that are public, they receive them. For instance, if someone asks staff for a particular Statement of Economic Interests, staff gives it to him or her. However, if someone asks staff to analyze a document for possible violations, staff does not do that. If someone asks staff if there is anything "interesting" about a particular document, staff does not respond. If staff finds evidence of a possible violation, the proper course of action is to report it to the Executive Director and the enforcement staff. If there is a question about legal compliance pertaining to a document that staff does not know how to handle, staff is to consult with the Executive Director first. If there is a possible violation or enforcement matter, staff is to report it to the Executive Director and the enforcement staff, so that investigations can be conducted in a confidential manner and political neutrality is maintained. Ms. Vida stated that the policy is a fair policy that balances the Commission's roles as an information agency and an enforcement agency.

Commissioner Planthold asked when a document becomes confidential. He described the instance of a hypothetical committee that supports a ballot measure to establish a fisheries commission and that "screws up" its campaign reports. A complaint is filed. Do the documents become confidential because a complaint has been filed? Ms. Vida responded in the negative, explaining that the documents themselves are public documents that remain available for public inspection; what is confidential is the fact that a complaint has been filed.

Commissioner Planthold then asked whether staff can respond to questions that a particular report appears incomplete or contains numbers that do not add up. Ms. Vida said that if the questions are about the filer's own filings, staff can provide guidance. If the questions are about someone else's filings, staff cannot comment.

In response to Chairperson Melbostad's invitation, Campaign Finance Officer Joe Lynn commented on the policy articulated by Ms. Vida. Mr. Lynn stated that he has been entrusted with carrying out the policy for the past five years and that he has earned a reputation as being neutral and helpful. Mr. Lynn, who then passed out a filed campaign report, said that the policy articulated by Ms. Vida may be problematic. For instance, the campaign report at hand contains a design defect and if he were not able to explain the design defect to a member of the public who inquired about what was reported, the member of the public may be misled. He also stated that before he could disclose the report, he must determine whether there is a compliance issue. He added that it is difficult for staff to determine what is a compliance issue.

Ms. Vida responded that Mr. Lynn's characterization of the policy misrepresented what she told staff. She explained that if staff recognizes that compliance may be an issue or a question, the matter should be brought to her attention; but if the request is for a specific document, staff is to make it available.

Commissioner Garcia stated that the policy appears clear: staff is free to give out a public document that comes in, but staff is not free to comment on whether there is a compliance issue. Mr. Lynn explained that if all he did was to give out the requested document without comment, the public could be misled about the information that is on the document.

Richard Knee, a member of the San Francisco Sunshine Ordinance Task Force, provided comment on behalf of himself. He called the Commission's attention to sections 67.22(e) and 67.23 of the Sunshine Ordinance, which provide that public employees should not be discouraged from, or disciplined for, disclosing any information that is public, and that expedited public access to public information

supersedes other local laws.

Mr. Lynn stated that there is a tension between the Commission's duty to adjudicate complaints and its duty to educate the public. He said that he usually builds a firewall between himself and the complaint process and that he does not answer questions as to whether there is a violation. He normally refers questions about possible violations to experts outside of the Commission so that the public can be educated without the Commission being involved.

Asked to clarify what "without comment" means, Ms. Vida said that that means without analyzing the information. She pointed out that nothing in her instructions prevents staff from disclosing public information. Staff is to respond to questions in an even-handed manner by avoiding response to open-ended questions or voluntarily giving and analyzing information that may touch on compliance issues. She added that the example provided by Mr. Lynn does not align with what she said. She said there may have been a misunderstanding because her instructions do not prevent staff from giving out correct information, nor has she instructed staff to withhold accurate information.

Mr. Safire said that he agreed with the Commission's policy on getting information to the public in an expeditious fashion. The concern, he said, was in implementing the policy. Ms. Vida responded that if the public requests a specific document, they get it; if there is a question about the document, staff is to ask her or in her absence, the Deputy Director. Mr. Safire recommended that the Commission reduce its policy to writing.

VI. Discussion and possible action re: Approval of proposed Ethics Commission budget for FY 03-04.

(Prior to discussion of this item, the Commission, to accommodate the schedule of the speaker, heard from Kate Favetti, Executive Officer of the Civil Service Commission. Her remarks are summarized under Item VII.)

Ms. Vida referred the Commission to her February 7, 2003 memo regarding the FY 03-04 budget proposal. With $939,407 in General Fund support and $147,727 in revenues, the target budget amounts to $1,087,132. Ms. Vida noted the proposed budget presented reflects only the 10 percent reduction, which amounts to $81, 058. The reduction comes from a $48,927 savings in salaries, a $30,078 savings in rent because the Commission is not moving into the space vacated by the Sheriff's Office, and a $2,053 savings in the DTIS work order due to the SQL server upgrade. Ms. Vida added that the staff projects revenue increases from campaign disclosure fines. She noted that in anticipating the budget cuts, the Commission did not fill two vacant positions. The 10 percent budget does not eliminate or de-fund the vacant positions, although one or both may be de-funded in the additional 10 percent contingency budget.

Commissioner Planthold said he opposed cutting positions because it will hurt the Commission's mission, ability and effectiveness. He suggested that the Commission protest to the Mayor because with only 12 staff positions (2 vacant positions) the Commission is too small to cut. In response to Chairperson Melbostad's question about whether the Commission could ask for special consideration for small departments due to hardship, Dawn Kamalanathan, Budget Analyst with the Mayor's Office, stated that the cuts are fair and across the board. She added that the additional 10% contingency cut is designed to make departments prioritize in phases how they would function should the contingency budget be implemented. Commissioner Planthold suggested that the Commission look at different ways to cut rather than simply cutting staff positions.

Commissioner Planthold questioned the proposed $2,500 professional services cost for preparation of the annual report. He proposed that members of the Commission could draft their own report. Ms. Vida stated that having a consultant prepare the report saves enormous staff time and allows staff to work on other matters that require their attention. Commissioner Planthold moved to delete the $2,500 budget item from the proposed budget. The motion failed for lack of a second.

Motion 03-2-10-3 (McCoy/Garcia): Moved, seconded, and passed 3-1 (Commissioner Planthold opposing): That the proposed budget be approved as recommended by staff.

VII. Discussion and possible action re: Review of San Francisco's conflict of interest laws applicable to City officers and employees, including provisions related to post-employment restrictions (Charter sections 15.100, 15.108 and C8.105(e) and (I) and Campaign and Governmental Conduct ("C&GC) Code section 3.700 et seq.), incompatible activities (Charter sections C81.05(g) and (f), C&GC Code sections 3.200 and 3.300, and Charter section 15.106 and new staff proposals), and political activities (C&GC Code section 3.400 and Charter sections 13.103.5, 15.100 and 6.102).

A. Post-employment Restrictions.

Deputy Executive Director Mabel Ng called the Commission's attention to the February 6, 2003 memo on post-employment restrictions, which outlined five options relating to the three proposals that remained to be discussed from the last meeting. The first proposal addressed general post-employment restrictions and called for a permanent ban on a former officer or employee working or assisting on a matter in which he or she personally and substantially participated, a one-year ban on appearing before the former agency, and a provision for the Commission to waive the bans. Option 1 would apply whether or not the former officer or employee is compensated; Option 2 would apply only if the former officer or employee is compensated. Ms. Ng explained that staff recommended Option 1 because undue influence may occur regardless of whether a former officer or employee is compensated. Chairperson Melbostad stated that the prohibitions should apply only if the officer or employee is compensated.

Motion 03-2-10-4 (Planthold/Garcia): Moved, seconded, and passed 3-1 (Commissioner Melbostad opposing): That Option 1 of the amendments to Charter section C.8.105(e) as proposed by staff be adopted.

Ms. Ng then explained the two options relating to amendments to Charter section 15.100, which applied to members and employees of the Ethics Commission. She stated that staff recommended Option 3 because Commission members and employees would be subject to the same proscriptions as other officers and employees under Option 1 adopted above, and it appears that most of the restrictions in Option 4 were duplicative or too restrictive.

Motion 03-2-10-5 (Planthold/Garcia): Moved, seconded, and passed unanimously: That Option 3 of the amendments to Charter section 15.100 as recommended by staff be adopted.

Ms. Ng discussed Option 5, which would amend San Francisco Campaign and Governmental Conduct section 3.545 to extend to the Mayor the lobbying ban that currently affects former members of the Board of Supervisors and to reduce the time from two years to one year to achieve consistency with the other post-employment restriction timeframes. Commissioner McCoy opposed the inclusion of the Mayor and asked whether the change was due to inappropriate conduct. Ms. Ng

explained that the proposed changes did not spring from any inappropriate conduct whatsoever. When staff considered changes, it recommended inclusion of the Mayor in the lobbying ban because the Mayor has as much budgetary authority as the Board of Supervisors, and the original legislation was designed to address the special influence that supervisors have as a result of their contacts, special knowledge and prior positions of authority. Staff believes that the Mayor has similar contacts, special knowledge and position of authority.

Motion 03-2-10-6 (Planthold/Garcia): Moved, seconded, and passed 3-1 (Commissioner McCoy opposing): That Option 5 of the amendments to C&GC Code section 3.545 as recommended by staff be adopted.

B. Incompatible Activities.

Kate Favetti, Executive Officer of the Civil Service Commission ("CSC"), in referring the Commission to a February 6, 2003 notice, testified that the CSC had taken action at its February 3,2003 meeting on the proposed amendments. The CSC supports adding a statement that employees may not accept any gratuities for duties performed in the normal course of employment and a provision that the CSC review occupational categories considered in conflict with City employment prior to submission to, or final approval by, the Ethics Commission. Ms. Favetti and Ms. Vida stated that they will work with each other on the amendments.

Ms. Ng referred the Commission to the January 9, 2003 memo that outlined staff's proposals on incompatible activities. Staff proposed deleting the current first paragraph of Charter section C8.105(g) and replacing it with language to create a local ban on City officers and employees from engaging in any employment, activity or enterprise that appears on a statement of incompatible activities adopted by the department or commission of which the officer or employee is a member or employee. Each department, board, commission and agency must submit a statement of incompatible activities that must include certain activities. Ms. Ng noted that after consideration of testimony from Ms. Favetti at the last meeting, staff recommended deletion of language in the proposal that specifically referred to the meet and confer process. She explained that meet and confer is already a requirement of state law and thus it was not necessary to set the process out here.

Motion 03-2-10-7 (Garcia/McCoy): Moved, seconded, and passed unanimously: That staff's proposal to regulate incompatible activities and to delete the first paragraph of C8.105(g), as modified, be adopted.

In discussing the second paragraph of Charter section C8.105(g), Ms. Ng noted that testimony received from the CSC at the last meeting suggested that those portions of the second paragraph related to the CSC should be moved to Charter section 10.101, to accord with similar movements of those provisions that relate to the Fire and Police Commissions.

Motion 03-2-10-8 (Planthold/Garcia): Moved, seconded, and passed unanimously: That staff's proposal to amend the second paragraph of Charter section C8.105(g), as modified, be adopted.

Motion 03-2-10-9 (Planthold/Garcia): Moved, seconded, and passed unanimously: That staff's proposal to delete Charter section C8.105(f) be adopted.

Motion 03-2-10-10 (Planthold/Garcia): Moved, seconded, and passed unanimously: That staff's proposal to amend C&GC Code Section 3.200 be adopted.

In considering the amendments to section 3.300 of the Campaign and Governmental Conduct Code, Ms. Ng proposed that the language in proposed section 3.300(b), "to communicate orally or in writing" be changed to "to communicate orally, in writing, or in any other manner," to achieve consistency with similar language that was adopted in the post-employment restrictions.

Motion 03-2-10-11 (Garcia/McCoy): Moved, seconded, and passed unanimously: That staff's proposal to amend C&GC Code Section 3.300, as modified, be adopted.

Motion 03-2-10-12 (Planthold/Garcia): Moved, seconded, and passed unanimously: That staff's proposal to amend Charter section 15.106 be adopted.

Motion 03-2-10-13 (Garcia/Planthold): Moved, seconded, and passed unanimously: That staff's proposal to add new provisions regarding referrals be adopted.

C. Political Activity.

Ms. Ng stated that four sections of local law regulate the political activities of local officers and employees. Because three of these sections were recently amended, staff did not propose changes in them. The only change staff proposed was to amend S.F. Campaign and Governmental Conduct Code section 3.400(c) to include a definition of the term "City premises."

Motion 03-2-10-14 (McCoy/Garcia): Moved, seconded, and passed unanimously: That staff's proposal to amend C&GC Code section 3.400(c) be adopted.

VIII. Discussion and possible action re: Whether the Commission should propose increasing the annual registration fees, the pro-rated initial registration fees, and the late filing fee for lobbyists imposed by C&GC Code sections 2.110 and 2.145.

Shannon Hardin, Ethics Investigator/Legal Analyst, referred the Commission to the February 4, 2003 memo regarding proposed amendments to the Lobbyist Ordinance. She reported that it costs approximately $534 to administer the program for each lobbyist and $79 for each client. The annual lobbyist registration and client fees yield approximately $21,000, or about 58 percent of what it costs to administer the program. Staff recommended raising the lobbyist registration fee from $300 to $450 and the per-client registration fee from $50 to 75, to cover some of the shortfall in the administration costs. Pro-ration of fees for the initial registration of lobbyists would be retained.

Ms Hardin reported that the current $300 fee was set in 1997, and that staff's proposal followed the change that was recently enacted in Los Angeles. Chairperson Melbostad stated that the fee should be increased to $500, since that amount would come closer to covering the costs of administration of the program. Commissioner Garcia recommended that a short paragraph be written to explain the reason to those who will be affected by this rate increase. He also echoed Chairperson Melbostad's recommendation that the registration fee be increased to $500.

Anita Mayo of Pillsbury Winthrop stated that a jump from $300, which is already high, to $450, is huge. She explained that Los Angeles has many numbers of lobbyists registered with that commission, which justifies the fee increase. But there are only 42 registered contract lobbyists in San Francisco.

Commissioner McCoy stated that $450 seemed reasonable but $500 seemed too high. He expressed concern that some lobbyists may not register, causing the Commission to lose revenues instead.

Motion 03-2-10-15 (Garcia/Planthold): Moved, seconded, and passed 3-1 (Commissioner McCoy opposing): That the Commission raise the lobbyist registration fee from $300 to $500 and the per client registration fee from $50 to $75.

Ms. Hardin stated that staff recommended increasing the current late filing fine for lobbyists from $25 to $50 per day to achieve consistency with the Campaign Consultant Ordinance, which currently provides a $50 per day fine for late filers.

Motion 03-2-10-16 (Garcia/Planthold): Moved, seconded, and passed unanimously: That the Commission adopt staff's recommendation to raise the lobbyist late filing fine to $50 per day.

IX. Discussion and possible action re: Items for future agendas.

Commissioner Melbostad stated that the Commission should consider the nomination of Chairperson and Vice-Chairperson at its next meeting.

The Commissioners also discussed the necessity of scheduling another special meeting to discuss the additional 10% contingency budget cut. The Commissioners decided to calendar a special meeting on February 24, 2003.

Ms. Vida noted that at the next regular meeting Shaista Shaikh, the Commission's Public Finance Administrator, will submit a proposal for identifying committees to audit.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

XI. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

The Commission continued discussion of this matter to the next meeting.

XII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance

section 67.12 on whether to disclose action taken or discussions held in closed session.

> **Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.**

The Commission continued discussion of this matter to the next meeting.

XIII. Adjournment.

The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

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Grace Chau

Public Finance Auditor

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING AND AGENDA

Monday, February 24, 2003, 5:30 P.M.*

Room 34 City Hall*
1 Dr. Carlton B. Goodlett Place, San Francisco

***Please note change in date and room number.**

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Discussion and possible action re: Approval of proposed Ethics Commission contingency budget for FY 03-04. At its last meeting on February 10, 2003, the Commission approved a budget for FY 03-04 that reflects a 10 percent reduction in its current budget. At its February 24, 2003 meeting, the Commission will consider a contingency budget that reflects a further 10 percent reduction in its budget for FY 03-04. A staff report and proposed contingency budget will be available from the Commission office and its web site on Thursday, February 20.**

IV. **Discussion and possible action re: Nomination and election of candidates for the positions of Chairperson and Vice-Chairperson.**

V. **Discussion and possible action re: Items for future agendas.**

VI. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

VII. **Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.**

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 3

VIII. **Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.**

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public [not] to disclose its closed session deliberations re: pending litigation.

IX. Adjournment.

Know Your Rights Under the Sunshine Ordinance

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Ethics Commission

February 24, 2003

(Approved 3/10/03)

Minutes of the Speccial Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 34

February 24, 2003, 5:30 p.m.

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special

I. Call to order and roll call.

Chairperson Paul Melbostad called the meeting to order at 5:45 p.m.

COMMISSION MEMBERS PRESENT: Paul H. Melbostad, Chairperson; Robert R. Planthold, Vice-Chairperson; Michael Garcia, Commissioner; Michele Anglade, Commissioner; Waukeen Q. McCoy, Commissioner.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shannon Hardin, Ethics Investigator/Legal Analyst; Joe Lynn, Campaign Finance Officer.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

MATERIALS DISTRIBUTED:

Memo from Ginny Vida, Executive Director, to Members, Ethics Commission re Action Item III

Letter dated Feb. 21, 2003, from Ginny Vida to Mayor Willie L. Brown and accompanying Budget Submission

Summary of Proposed Performance Measures

II. Public Comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Commission.

There was no public comment.

III. Discussion and possible action re: Approval of proposed Ethics Commission contingency budget for FY 03-04.

Executive Director Ginny Vida, at the request of the Chair, explained the contingency budget proposal contained in her memo. The contingency budget was prepared

according to instructions from the Mayor to reflect the possibility that the General Fund support to the Commission for FY 03-04 would be cut by 10% from the level of the baseline budget (initial 10% reduction budget) approved by the Commission at its last meeting. In such an event, staff proposed not funding the Campaign Finance Auditor (1654) position which is now vacant. Ms. Vida noted that this would still leave the Commission with two members of its staff qualified to perform full campaign finance audits. She also stated that staff would be proposing at the next Commission meeting new ways of selecting committees for audit.

Motion 03-2-24-1 (Planthold/Anglade): Moved, seconded, and unanimously passed that the Commission adopt the staff proposal concerning the Contingency Budget.

IV. Discussion and possible action re: Nomination and election of candidates for the positions of Chairperson and Vice-Chairperson.

Motion 03-2-24-2 (Anglade/McCoy): Moved, seconded, and unanimously passed that the election of officers be held at the next regularly scheduled meeting of the Commission.

V. Discussion and possible action re: Items for future agendas.

Ms. Vida, in response to a question posed by Commissioner Planthold, noted that a report on the audit selection process should be available for the next Commission meeting.

There was also some discussion concerning the fines collection program, including questions concerning a process available to committees for appeal to the Commission and the Commission's need for a better understanding of the amounts of fines assessed, waived and collected.

VI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

VII. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 3

The Commission convened to closed session at 6:45 p.m. and convened to open session at 7:43 p.m.

VIII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinancesection 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: 03-2-24 (Anglade/Garcia): Moved, seconded, and unanimously passed that pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

IX. Adjournment.

The meeting was adjourned at 7:45 p.m.

Respectfully submitted,

_____

Joe Lynn

Campaign Finance Officer

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
AND AGENDA

Monday, March 10, 2003, 5:30 P.M.*

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

***Please note that a closed session will be held early in the meeting. The Commission will then reconvene in public session.**

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

CLOSED SESSION: approx. 5:40 p.m. to 6:20 p.m.

III. **Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.**

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 2

IV. **Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.**

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

PUBLIC SESSION: approx. 6:20 p.m.

V. **Discussion and possible action re: Approval of the minutes of the Ethics Commission meetings of February 10, 2003, and February 24, 2003.**

VI. **Executive Director's report**
1. **Budget update**
2. **Limited public financing program**
3. **Legislative developments**
4. **Advice and opinions**
5. **Investigation and enforcement program**

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6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach

VII. Discussion and possible action re: Nomination and election of Chairperson and Vice-Chairperson.

VIII. Review of San Francisco's conflict of interest laws applicable to City officers and employees, including provisions related to confidential information (Charter section C8.105(d); remedies and penalties (Charter sections C8.105(k), (m), (n); 15.103; 15.104; 15.105; and Article XVII); and possible new proposals regulating conflicts of interest not addressed by current proposals. A staff report on confidential information, remedies and penalties and possible new proposals will be available from the Commission office and its web site on Thursday, March 6.

IX. Discussion and possible action re: Proposed guidelines for selection of committees for audit that were active in calendar years 2001 and 2002, excluding candidates who received public financing in 2002. A staff report will be available on Thursday, March 6.

X. Discussion and possible action re: Items for future agendas.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

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Ethics Commission

30 Van Ness Ave., Suite 3900
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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING AND AGENDA

Monday, March 10, 2003, 5:30 P.M.*

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

***Please note that a closed session will be held early in the meeting. The Commission will then reconvene in public session.**

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

CLOSED SESSION: approx. 5:40 p.m. to 6:20 p.m.

III. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 2

IV. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

PUBLIC SESSION: approx. 6:20 p.m.

V. Discussion and possible action re: Approval of the minutes of the Ethics Commission meetings of February 10, 2003, and February 24, 2003.

VI. Executive Director's report
1. Budget update
2. Limited public financing program

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3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach

VII. Discussion and possible action re: Nomination and election of Chairperson and Vice-Chairperson.

VIII. Review of San Francisco's conflict of interest laws applicable to City officers and employees, including provisions related to confidential information (Charter section C8.105(d); remedies and penalties (Charter sections C8.105(k), (m), (n); 15.103; 15.104; 15.105; and Article XVII); and possible new proposals regulating conflicts of interest not addressed by current proposals. A staff report on confidential information, remedies and penalties and possible new proposals will be available from the Commission office and its web site on Thursday, March 6.

IX. Discussion and possible action re: Proposed guidelines for selection of committees for audit that were active in calendar years 2001 and 2002, excluding candidates who received public financing in 2002. A staff report will be available on Thursday, March 6.

X. Discussion and possible action re: Whether the Ethics Commission should amend its proposed FY 03-04 budget (initial 10% reduction budget and additional 10% contingency budget) to create in its non-personal services budget a $10,000 contingency fund for the investigation and enforcement program to cover costs of serving subpoenas, conducting depositions and associated costs of conducting public hearings.

XI. Discussion and possible action re: Items for future agendas.

XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XIII. Adjournment.

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Ethics Commission

March 10, 2003

Approved 4/14/03

Minutes of the Regular Meeting of the
San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408
March 10, 2003, 5:30 p.m.

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I. Call to order and roll call.

Chairperson Paul Melbostad called the meeting to order at 5:35 p.m..

COMMISSION MEMBERS PRESENT: Paul H. Melbostad, Chairperson; Robert R. Planthold, Vice-Chairperson; Michael Garcia, Commissioner; Michele Anglade, Commissioner; Waukeen Q. McCoy, Commissioner.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shannon Hardin, Ethics Investigator/Legal Analyst; Shaista Shaikh, Public Finance Administrator

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney; Randy Riddle, Deputy City Attorney.

MATERIALS DISTRIBUTED:

Agenda for the Meeting of March 10, 2003

Executive Director's Report for the Meeting of March 10, 2003

Approved Minutes of the Special Meeting of January 13, 2003

Draft Minutes of the Special Meeting of February 10, 2003

Draft Minutes of the Regular Meeting of February 10, 2003

Draft Minutes of the Special Meeting of February 24, 2003

March 6, 2003 memo from Executive Director Ginny Vida regarding the prohibition on disclosure or use of privileged City information.

March 6, 2003 memo from Executive Director Ginny Vida regarding conflict of interest penalty provisions

March 6, 2003 memo from Executive Director Ginny Vida regarding conflict of interest

proposals adopted by the Commission to date

March 6, 2003 memo from Executive Director Ginny Vida regarding guidelines for selecting committees that were active in calendar years 2001-2002 for audit

March 9, 2003 San Francisco Chronicle article, "S.F. tow firm raked by scandal, suits but City may review $50 million pact with company that has ties to mayor's friend."

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

III. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

The Commission adjourned to a closed session at 5:36 p.m..

IV. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance

section 67.12 on whether to disclose action taken on discussions held in closed session.

Motion 03-03-10-1 (Planthold/Garcia): Moved, seconded, and passed unanimously: that pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

V. Discussion and possible action re: Approval of the minutes of the Ethics Commission meetings of February 10, 2003 and February 24, 2003.

Motion 03-03-10-2 (Planthold/Garcia): Moved, seconded, and passed unanimously: that the minutes of the Ethics Commission meetings of February 10, 2003 and February 24, 2003 be approved as drafted.

VI. Executive Director's Report.

Executive Director Ginny Vida announced that the Rules Committee has calendared the Commission's proposed amendments to the Campaign Finance Reform Ordinance for March 19, 2003 at 9:30 a.m. in City Hall, Room 263.

Ms. Vida reported that the Commission has scheduled a brown bag lunch meeting on March 17, 2003 at 1:30 p.m. with commission secretaries to provide instruction on how to ensure that members of City boards and commissions meet their Statement of Economic Interests filing obligations. The meeting will take place in City Hall, Room 34.

VII. Discussion and possible action re: Nomination and election of Chairperson and Vice-Chairperson.

Commissioner Garcia nominated Commissioner Planthold as Chair, Commissioner McCoy nominated Commissioner Garcia as Chair, and Commissioner Anglade nominated Commissioner McCoy. Commissioner Garcia declined the nomination. After some discussion, Commissioner Planthold was elected Chair by a 3 - 2 vote (Planthold,

Garcia, Melbostad - Anglade, McCoy). Commissioner Melbostad then turned the meeting over to him.

Commissioner Melbostad nominated Commissioner Garcia for the position of Vice-Chair, and Commissioner Anglade nominated Commissioner McCoy. After some discussion, Commissioner Garcia was elected Vice-Chair by a 3 - 2 vote (Planthold, Garcia, Melbostad - Anglade, McCoy).

VIII. Review of San Francisco's conflict of interest laws applicable to City officers and employees, including provisions related to confidential information (Charter section C8.105(d); remedies and penalties (Charter sections C8.105(k), (m), (n); 15.103; 15.104; 15.105; and Article XVII); and possible new proposals regulating conflicts of interest not addressed by current proposals.

Deputy Director Mabel Ng referred the Commission to staff's March 6, 2003 memo regarding the prohibition on disclosure or use of privileged City information under Charter section C.8.105(d). Ms. Ng summarized staff's proposed amendments, which would extend the law's application to former employees and provide a definition of confidential or privileged information.

Motion 03-03-10-3 (Garcia/McCoy): Moved, seconded, and passed unanimously: that the amendments to Charter section C.8.105(d) as proposed by staff be adopted.

Ms. Ng presented staff's proposed amendments to the City's conflict of interest laws dealing with penalties as summarized in staff's March 6, 2003 memo. With the exception of the amendments discussed below, the draft amendments presented did not generate substantive questions or discussion.

Ms. Ng explained staff's proposed amendments to create a civil enforcement mechanism under C8.105, which would maintain the current authority for the City Attorney and a private citizen to bring a civil action for injunctive relief. Staff's proposed amendments would give the City Attorney authority to seek a civil penalty up to $5,000 per violation. The amendments would also award attorneys fees and costs to a resident who obtains injunctive relief or to a defendant if an action was frivolous.

Commissioner Anglade suggested deleting staff's proposed language to award attorneys fees and costs for frivolous actions because the provision may act as a deterrent.

Commissioner Melbostad noted that courts impose a very high standard when deciding if an action is frivolous. He also noted that if there is no deterrent to filing frivolous claims, there may be an incentive to file claims for political reasons.

Ms. Ng added that even though the initial filing of civil actions with the City Attorney may deter frivolous actions, there may be individuals who would consistently file suits. Ms. Ng explained that the language was intended to track the Campaign Finance Reform Ordinance and add clarity to the provision by placing possible plaintiffs on explicit notice that attorney's fees and costs will be awarded for frivolous claims.

Commissioner Garcia agreed with Commissioner Anglade that a person with a meritorious claim may be deterred from filing suit. Commissioner McCoy also stated that he would not approve staff's proposed language if it acted as a deterrent.

Motion 03-03-10-4 (Anglade/McCoy): Moved, seconded, and passed 4-1

(Commissioner Melbostad opposing): that staff's draft amendments relating to penalties and enforcement be amended to eliminate the sentence, "If the court finds that an action brought by a resident is frivolous, the court may award the defendant reasonable attorney's fees and costs."

Ms. Ng then explained that although staff's proposal would not change the Ethics Commission's authority to impose penalties for violations of conflict of interest provisions, it would explicitly set forth provisions related to such administrative penalties. Staff's proposal would also give the Commission authority to issue warning letters to City officers and employees, which could be used as an aggravating factor in future enforcement actions.

Motion 03-03-10-5 (Garcia/McCoy): Moved, seconded, and passed unanimously: that all amendments to Charter section C8.105 civil penalties and enforcement provisions as proposed by staff and as amended by the Commission be adopted.

Ms. Ng summarized staff's proposed amendments to Charter section C8.105 (m) relating to removal from office. Staff's proposal is detailed in the March 6, 2003 memo on penalties from Ms. Vida to the Commission.

Commissioner Melbostad expressed concern for situations when an officer or employee is removed and disqualified from City office or employment for a term of five years. He suggested that such officers and employees should have a right to appeal the decision to the Ethics Commission.

After brief discussions on the definitions of "moral turpitude" and "public officer," Chairperson Planthold suggested that the Commission defer action on staff's proposed amendments until the end of the meeting or until the next regular meeting.

IX. Discussion and possible action re: Proposed guidelines for selection of committees for audit that were active in calendar years 2001 and 2002, excluding candidates who received public financing in 2002.

Public Finance Administrator Shaista Shaikh summarized staff's proposal to audit 16 committees selected from the 2001-2002 audit pool as follows: 1) four committees with financial activity of more than $100,000; 2) two committees with financial activity of $50,000-$100,000; and 3) ten committees with financial activity of $1,000-$19,999. Staff's proposal is detailed in the March 6, 2003 memo on audit selection guidelines from Ms. Vida to the Commission.

Commissioner Melbostad noted that there is a greater public interest in auditing committees that raised significant amounts of money, rather than committees that raised minimal amounts. He also noted that committees that raise over $100,000 often have professional treasurers and, as such, make fewer mistakes on their campaign disclosure statements. He suggested amending staff's proposal to audit committees from the following pool: 1) four committees with financial activity of more than $100,000; 2) six committees with financial activity of $50,000-$100,000; and 3) six committees with financial activity of $1,000-$19,999.

Motion 03-03-10-7 (Melbostad/Anglade): Moved, seconded, and passed unanimously: that the guidelines for selection of committees for audit that were active in calendar years 2001-2002 as proposed by staff be amended to reflect the changes suggested by Commissioner Melbostad.

Motion 03-03-10-8 (Melbostad/McCoy): Moved, seconded, and passed unanimously: that the guidelines for selection of committees for audit that were active in

calendar years 2001-2002 as proposed by staff be adopted with the changes suggested by Commissioner Melbostad.

X. Discussion and possible action re: Whether the Ethics Commission should amend its proposed FY 03-04 budget (initial 10% reduction budget and additional 10% contingency budget) to create in its non-personal services budget a $10,000 contingency fund for the investigation and enforcement program to cover costs of serving subpoenas, conducting depositions and associated costs of conducting public hearings.

Ms. Vida explained that due to the record number of pending formal investigations, the Commission needs funds to cover the costs associated with the investigation and enforcement program, such as costs of serving subpoenas, and conducting depositions and public hearings. Ms. Vida noted that no funds are currently allocated for such costs, except employee salaries. She recommended that, subject to the Mayor's approval, the Commission transfer $10,000 dollars from temporary salaries savings to a contingency fund to be used for the costs of investigations.

Chairperson Planthold stated that he agreed with the proposed budget amendment because it would send a message to the regulated community that the Commission is serious about its investigations.

Motion 03-03-10-9 (Melbostad/Garcia): Moved, seconded, and passed unanimously: that the Commission's proposed FY 03-04 budget be amended to create a $10,000 contingency fund to cover costs associated with the investigation and enforcement program.

XI. Discussion and possible action re: Items for future agendas.

Commissioner Anglade suggested that the discussion and action on staff's proposed amendments on removal from office provisions be deferred until the next regular meeting.

Commissioner Melbostad asked staff to draft language that would give officials and employees who have been disqualified from office or employment the right to appeal the decision to the Ethics Commission.

Commissioner Anglade requested clarification of the term "public officer" as used in Charter section C15.105(f).

Commissioners McCoy and Garcia asked for the definition of "moral turpitude."

Moving on from the discussion on removal, Ms. Vida noted that staff requests deferring any discussion of how waivers for fines are decided until after the budget analyst completes her review of the Commission's budget. Chairperson Planthold agreed that the Commission was amendable to deferring the discussion until the May or, if necessary, later meetings.

Ms. Vida also noted that the deadline for introducing Charter amendments to the Board of Supervisors is May 19, 2003; therefore, the Commission must approve all Charter amendments during the April meeting to allow for final changes, if necessary, during the May meeting.

XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

XIII. Adjournment.

The meeting was adjourned at 8:49 p.m.

Respectfully submitted,

_____

Shannon Hardin

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Ethics Commission

30 Van Ness Ave., Suite 3900
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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
AND AGENDA

Monday, April 14, 2003, 5:30 P.M.

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Approval of the minutes of the Ethics Commission meeting of March 10, 2003. (Discussion and possible action.)**

IV. **Selection of campaign committees for audit in FY 03-04. The Commission will select 16 committees from a pool of local committees that were active in the 2001 and 2002 elections, excluding candidates who received public financing. A list of committees in the audit pool will be available at the Commission office and on its web site on Thursday, April 10. The Commission adopted guidelines for the selection of these committees at its March 10, 2003 meeting. (Discussion and possible action.)**

V. **Executive Director's report**
1. **Budget update**
2. **Limited public financing program**
3. **Legislative developments**
4. **Advice and opinions**
5. **Investigation and enforcement program**
6. **Campaign finance disclosure program**
7. **Electronic filing program**
8. **Campaign finance audit program**
9. **Lobbyist program**
10. **Campaign consultant program**
11. **Statements of Economic Interests**
12. **Sunshine Ordinance Declarations**
13. **Education and outreach**
14. **Plans for governmental ethics conference in December 2004**

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VI. **Whether the Electronic Filing Ordinance should be amended to increase the fine for late-filed electronic campaign statements from $10 per day to $25 per day. A staff report will**

be available at the Commission office and on its web site on Thursday, April 10. (Discussion and possible action.)

VII. Review of San Francisco's conflict of interest laws applicable to City officers and employees, including provisions related to removal and official misconduct (Charter sections C8.105(m), 15.103, 15.104, 15.105, and Article XVII); and possible new proposals such as clarifying the term "officer," addressing Charter section C8.105(l), adopting provisions related to nepotism, prohibiting service by an employee on a commission that oversees the employee's department, adopting a statute of limitations, and moving certain Charter provisions into the S.F. Campaign and Governmental Conduct Code. A staff report will be available at the Commission office and on its web site on Thursday, April 10. (Discussion and possible action.)

VIII. Review of the Ethics Commission's proposed amendments to the Campaign Finance Reform Ordinance. The Commission's proposed amendments were considered by the Rules Committee on March 19, 2003. The Commission will consider recommendations by the Rules Committee to amend Section 1.104(o) to change the definition of a qualifying contribution to include only contributions of not less than $10 and not more than $100; and to review the proposed amendments to identify and recommend whether specific provisions of the amendments should have an effective date that occurs sometime after the November 2003 election. In addition, the Commission will consider staff proposals to make technical changes and to incorporate provisions similar to Article III, Chapter 7 of the Campaign and Governmental Conduct Code into the CFRO. A staff report will be available at the Commission office and on its web site on Thursday, April 10. (Discussion and possible action.)

IX. Whether to request that the City Attorney file an Amicus Brief on behalf of the Ethics Commission in the case of People v. Chinchilla, case no. 2077432, in order to clarify for the appellate court the Commission's analysis of San Francisco Charter section C8.105(f) and proposed amendments to that section, which were discussed by the trial court in its opinion dismissing the counts under section C8.105(f). Copies of staff's proposals and minutes from the Commission meetings where discussion and action on staff's proposals occurred are available at the Commission office or on its web site. (Discussion and possible action.)

X. Whether the Chair should designate someone other than himself to serve as liaison to the Sunshine Ordinance Task Force, pursuant to By-laws Article IV, Section 3, and if so, who should be designated. (Discussion and possible action.)

XI. Whether the Ethics Commission should suggest criteria to be considered in prioritizing the order in which staff processes formal complaints, and if so, what criteria should be suggested. (Discussion and possible action.)

XII. Items for future agendas. (Discussion and possible action.)

XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XIV. Adjournment.

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Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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Ethics Commission >> Meeting Information

Ethics Commission

April 14, 2003

(Approved 05/12/03)

Minutes of the Regular Meeting of the

San FranciscoEthics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

April 14, 2003, 5:30 p.m.

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I. Call to order and roll call.

Chairperson Robert Planthold called the meeting to order at 5:32 p.m. He noted that two students from the journalism department at San Francisco State were present in the audience as observers and would be taking photos during the course of the meeting.

COMMISSION MEMBERS PRESENT: Robert R. Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Waukeen Q. McCoy, Commissioner; Paul Melbostad, Commissioner. Commissioner Michele Anglade was excused.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Senior Campaign Finance Auditor; Frank Lester, Campaign Finance Assistant.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Anita Mayo, Pillsbury Winthrop.

MATERIALS DISTRIBUTED:

Agenda for the Meeting of April 14, 2003

Approved minutes of the Special Meeting of the Ethics Commission of February 10, 2003

Approved minutes of the Special Meeting of the Ethics Commission of February 24, 2003

Draft minutes of the Regular Meeting of the Ethics Commission of March 10, 2003

Memo from Ginny Vida (by Shaista Shaikh) dated April 8, 2003 re: Committees Active in

2001 and 2002 Elections That Are Included in the Audit Pools for Random Selection at the Commission's April 14 Meeting

Memo from Ginny Vida dated April 10, 2003 re: Proposed Increase in Fine for Late-filed Electronic Campaign Reports

Executive Director's Report for the Meeting of April 14, 2003

Memo from Ginny Vida dated April 10, 2003 re: Conflict of Interest Law Amendments

Memo from Ginny Vida dated April 10, 2003 re: Further Changes to Proposed CFRO Amendments

Letter from Paul Ryan, Center for Governmental Studies, dated April 10, 2003, to Members of Ethics Commission

E-mail from Ginny Vida dated April 11, 2003 to Members of Ethics Commission re: Upcoming Campaign Finance Workshops

Article from *San Francisco Sentinel*, March 11, 2003, "Ethics Commission to become proactive in fine collection, training"

Article from *San Francisco Examiner*, March 12, 2003, "Judge throws out DA's ethics charges"

Article from *San Francisco Chronicle*, March 17, 2003, "Ethics panel eyes redevelopment role in Hunters Point"

Article from *San Francisco Examiner*, March 25, 2003, "On the chopping block?"

Article from *San Francisco Chronicle*, April 4, 2003, "S.F. union agrees to cut in take-home pay"

Article from *San Francisco Chronicle*, April 4, 2003, "S.F. may cut up to 1,000 city workers"

- **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

There was no public comment.

1. **Approval of the minutes of the Ethics Commission meeting of March 10, 2003.**

Motion 03-04-14-1 (Garcia/McCoy): Moved, seconded, and unanimously passed (4-0): that the minutes of the Ethics Commission meetings of March 10, 2003be approved as drafted.

1. **Selection of campaign committees for audit in FY 03-04.**

Shaista Shaikh briefly explained the process for selecting campaign committees for audit, referring to her memo of April 8, 2003. At its March 10, 2003 meeting, the Commission decided that 16 committees active during the years 2001 and 2002 would be randomly selected for audit based on a number of criteria, including financial activity.

The names of the 2001 and 2002 committees were printed on different colored slips of paper, each reflecting a different financial activity level. The slips were then folded and put into a box for random selection. Commissioner McCoy drew four slips from the Level 1 (over $100,000 activity) committees, Vice-Chairperson Garcia drew six slips from the Level 2 ($50,000-$100,000) committees, and Commissioner Melbostad drew six slips from the Level 3 ($1000-$49,999) committees. Ms. Shaikh then read the names of the selected committees into the record.

Ms. Shaikh said that each selected committee will be audited for compliance with state and local campaign finance reporting laws and requirements. Staff will contact committee treasurers to learn about the committees' procedures and operations and to review the committees' internal records. The audit process will determine whether each committee submitted complete, timely, and accurate information in its campaign disclosure statements. Ms. Shaikh stated that there is no specific timeframe within which audits must be completed.

The committees that were randomly selected for audit are the following:

Name of Committee	Identification Number	Financial Activity Level
Coalition For Fair Water Rates...No on A	1247126	1
Lazarus for City Attorney	1236075	1
Andrew Lee for Supervisor	1243359	1
Yes On R, HOPE-Homeownership Program...	1244434	1
San Franciscans for Voter Rights	1243043	2
Eisenberg for City Attorney	930886	2
Alice B. Toklas Lesbian & Gay Democratic Club	842018	2
Calvin Louie for Community College Board	1228806	2
S. F. For Affordable Clean Energy...Yes on D	1246425	2
Strunsky for Supervisor	1246077	2
San Francisco Late Night Coalition	991861	3
Yes on S (Medical Marijuana)	1250328	3
Committee for Better Parks	991852	3
S. F. for a Better Future...Yes on N and R	1246756	3
Bernal Heights Democratic Club	923351	3
Protect Our Neighborhoods (... for Prop. D)	1241170	3

- Executive Director's Report.

Executive Director Ginny Vida referred the Commission to her written report. She stated that as of April 11, 2003, the Commission had deposited $99,314 in revenues (out of a projected $137,438 in revenues to be generated by the end of June 2003). She added that three workshops will be held by campaign finance staff on May 20, 23, and 27, 2003, to familiarize attendees with campaign finance reporting requirements and researching the electronic filing database.

Chairperson Planthold said that he and Vice-Chairperson Garcia and Commissioner McCoy were actively pursuing with the Board of Supervisors the priority of keeping all current Ethics Commission staff positions funded and filled.

Ms. Vida said that Supervisor Ammiano will be introducing a resolution tomorrow to urge the Commission to conduct a public hearing and develop for City officeholders procedures for (1) screening applicants to City commissions and at-will employment and (2) training City commissioners and staff regarding conflict of interest and Sunshine Ordinance requirements (and any additional policies covering ethical conduct).

- Discussion and action re: Whether the Electronic Filing Ordinance should be amended to increase the fine for late-filed electronic campaign statements from $10 per day to $25 per day.

Ms. Vida noted that all active campaign committees with financial activity of $5,000 or more in a calendar year are required to file campaign statements electronically (as well as paper statements) under the Campaign and Governmental Conduct Code ("CGCC"). She said that she recently spoke with a representative of the Los Angeles City Ethics Commission who reported that that Commission has an electronic campaign statement filing compliance rate in excess of 95% (in comparison with a 69% compliance rate in San Francisco). Additionally, Los Angeles has a $25 per day late fee for electronic files, whereas San Francisco's fee is $10 per day. Based on the LAEC staff's statement that the $25 fine is at least an "important factor" in encouraging compliance, Ms. Vida recommended raising the late fine for electronic statements to $25 per day to encourage greater compliance with the electronic filing requirement.

Motion 03-04-14-2 (Melbostad/Garcia): Moved, seconded, and unanimously passed (4-0): that the Electronic Filing Ordinance be amended to increase the fine for late-filed electronic campaign statements from $10 per day to $25 per day.

- **Review of San Francisco's conflict of interest laws applicable to City officers and employees, including provisions related to removal and official misconduct (Charter sections C8.105(m), 15.103, 15.104, 15.105, and Article XVII); and possible new proposals such as clarifying the term "officer," addressing Charter section C8.105(l), adopting provisions related to nepotism, prohibiting service by an employee on a commission that oversees the employee's department, adopting a statute of limitations, and moving certain Charter provisions into the S.F. Campaign and Governmental Conduct Code.**

The discussion below refers to sections of the staff memo on conflict of interest law amendments dated April 10, 2003, and to an additional attachment covering further amendments to language in Sections 15.105 of the City Charter and CGCC Section 3.1-102.5. Deputy Executive Director Mabel Ng summarized each part of the memo; discussion among the commissioners followed.

Removal and disqualification.

In response to queries at the last Commission meeting, staff provided examples of crimes that constitute "moral turpitude." Staff recommended no change to its proposals on Charter section 15.105 (Suspension and Removal) except to add members of the Retirement Board to the enumerated positions in Section 15.105(a), in order to clarify existing language describing how certain officials may be subject to removal.

Motion 03-04-14-3 (Garcia/Melbostad): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed staff recommendations related to Charter section 15.105, as amended.

In response to the Commission's request that a person who is removed from office for official misconduct be given an opportunity to appeal the removal to the Commission, Ms. Ng presented a new proposal that will give at-will employees and officers the right to file an appeal if they are removed for official misconduct. She explained that most employees have Civil Service protections and may appeal any removal to the Civil Service Commission. Other appointed officers (such as those sitting on boards and commissions) are already subject to an appeal process that is set forth in section 15.105(a) and (b). Under the proposed amendments, any official who was removed from federal or state office for official misconduct would not have the right to appeal.

Motion 03-04-14-4 (Garcia/McCoy): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed Section 15.105(e) of the Charter, as revised, covering disqualification and providing a right of appeal to at-will employees and officers who are removed for official misconduct.

Definition of City Officer.

Motion 03-04-14-5 (Garcia/Melbostad): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed staff amendments to Section 1.50 of the Administrative Code to clarify and expand the definition of "City officer."

Charter Section C8.105(l).

Ms. Ng explained that under the proposed amendments, the Ethics Commission could waive prohibitions related to incompatible activities, compensated advocacy, and post-employment restrictions if a member of a board or commission must, by law, be appointed to represent a certain profession, trade, union, or association. A hypothetical example might be a member of the Arts Commission who is required to be an architect and who also continues to represent clients before the Planning Commission.

Motion 03-04-14-6 (Melbostad/Garcia): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed staff recommendation to delete Section C8.105(l) of the Charter and to add language to allow the Commission to grant waivers to provisions governing incompatible activities, compensated advocacy, and post-employment restrictions for members of boards and

commissions who by law must be appointed to represent professions, trades, businesses, unions or associations.

Proposition J.

Ms. Ng explained that Proposition J, which places limits on gifts, future employment and campaign contributions, and which is currently part of the CGCC, is now redundant because the goals of Proposition J are either (a) already addressed in the proposed conflict of interest amendments, or (b) scheduled to be addressed by proposed amendments to be considered in Item VIII at tonight's meeting.

Motion 03-04-14-7 (Melbostad/Garcia): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed staff recommendation to delete Proposition J from the Campaign and Governmental Conduct Code.

Additional Amendments.

Ms. Ng referred the Commission to section IIA and IIB of the staff memo concerning additional amendments. She addressed a question from Commissioner McCoy about the proposed language to clarify CGCC Section 3.222's prohibitions on representing private parties before other city officers and employees. She explained that the proposed addition of licensed attorneys to the exceptions in subsection (b) permits the status quo to continue. City officers who are licensed attorneys currently may represent their clients by communicating with the City Attorney's office, outside counsel hired by the City, or other City officers or employees who are named parties to pending litigation. Because the compensated advocacy ban extends to communications before other employees as well as boards and commissions, the added exception specifically allows attorney officers to continue to represent their clients before the City Attorney.

Vice-Chairperson Garcia asked whether the four-year statute of limitations proposed in CGCC Section 3.240 was customary. Mr. Jacobs said that the statute of limitations conforms with the time limit specified in the Political Reform Act.

Motion 03-04-14-8 (Garcia/McCoy): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed additional amendments as set forth in Section IIA and IIB of the staff memo.

Additional New Laws: Failure to File Statements of Economic Interests.

Ms. Ng explained that the proposed new language to CGCC Section 3.1-102.5 would change the current law to require every appointing authority whose appointees are required to file statements of economic interests with the Ethics Commission to provide written notice of the name of any appointee who has assumed or left office or employment. In addition, she reported that staff proposes adding a sentence to the end of Section 3.1-102.5(c), which would read, "Failure to provide such notice may constitute official misconduct."

Commissioner McCoy said that specifying termination as a penalty for failure to file a statement of economic interests seemed unduly harsh. Mr. Jacobs said that the definition of official misconduct includes a requirement that an official engage in tasks which are mandated by law, and if one of those tasks is filing a statement of economic interests and an official willfully fails to do so, the official could be removed for official misconduct. Mr. Jacobs pointed out that such removal would still have to take place under specified procedures.

Commissioner Melbostad said that it was his understanding that Commission staff had discretion to consider extenuating circumstances in evaluating any given official's compliance. Ms. Vida said that any action taken against a persistent non-filer would proceed in multiple stages, starting with at least two specific written notices to the filer that he or she has not complied. She pointed out that some officials, even after they have been pursued all year and given multiple notices, still do not file. The proposal sets a limit so that an official may not serve if he or she does not file after sufficient notice.

Motion 03-04-14-9 (Garcia/Melbostad): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed Section 3.1-102.5 of the Campaign and Governmental Conduct Code, as revised.

Service by an Employee on a Commission Overseeing the Employee's Department.

Motion 03-04-14-10 (Melbostad/Garcia): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed Section 3.208 as set forth in staff's memo.

Decisions Involving Family Members

Ms. Ng outlined the proposed addition of Section 3.212, which would restrict the ability of City officers and employees to make government decisions involving family

members.

Vice-Chairperson Garcia asked the Commission to consider expanding the proposed law to stipulate that any official making a decision about someone with whom the official has a relationship be required to disclose the nature of the relationship. He further proposed that if the relationship were adversarial, the public or representatives of the parties in interest would be allowed to request that the official recuse himself or herself; and once the relationship is disclosed, the other commissioners would have the opportunity to vote on whether the affected official should recuse himself or herself.

Commissioner Melbostad said that this issue was important but too far-ranging to be considered as part of staff's narrowly tailored proposal. Chairperson Planthold suggested that any training that the Commission offers new employees or officials include discussion of the need to disclose outside relationships that might be perceived to influence an official on a matter before him or her.

Mr. Jacobs said that any change of the kind that Vice-Chairperson Garcia proposes would have to be considered as a Charter amendment, because the Charter currently requires members of commissions and boards to vote on every matter before them unless an individual member is caused to recuse himself or herself by the full board. Mr. Jacobs also pointed out that Commissioners must act on these proposed amendments as soon as possible so that they could be referred to the Board of Supervisors before the May 19, 2003 deadline for Charter amendments. He added that if commissioners wish to put forward additional amendments they may still do so, once the proposed amendments are before the Board, by requesting that an individual supervisor introduce any new proposed amendment on the Commission's behalf.

Motion 03-04-14-11 (Melbostad/Garcia): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the **proposed Section 3.212** as set forth in **staff's** memo.

Moving Provisions from the Charter to the Campaign and Governmental Conduct Code.

Ms. Ng explained that the staff proposal to move the conflict of interest laws from the Charter into the CGCC would provide clearer and easier understanding of the City's conflict of interest laws by locating them in one place and would enable the laws to be amended by a supermajority of the Ethics Commission and the Board of Supervisors. To accomplish this, two measures would need to be placed before the voters. One is a Charter amendment (Attachment B to staff's memo), which would not take effect unless a second measure, an initiative ordinance (Attachment C to staff's memo), is adopted at the same election.

Motion 03-04-14-12 (Melbostad/McCoy): Moved, seconded, and unanimously passed (4-0): that the Commission adopt staff's proposal to move the conflict of interest laws from the Charter into the Campaign and Governmental Conduct Code, as described in the staff memo.

- Review of the Ethics Commission's proposed amendments to the Campaign Finance Reform Ordinance. The Commission's proposed amendments were considered by the Rules Committee on March 19, 2003. The Commission will consider recommendations by the Rules Committee to amend Section 1.104(o) to change the definition of a qualifying contribution to include only contributions of not less than $10 and not more than $100; and to review the proposed amendments to identify and recommend whether specific provisions of the amendments should have an effective date that occurs sometime after the November 2003 election. In addition, the Commission will consider staff proposals to make technical changes and to incorporate provisions similar to Article III, Chapter 7 of the Campaign and Governmental Conduct Code into the CFRO.

Ms. Vida said that the Rules Committee considered the Commission's proposed amendments to the Campaign Finance Reform Ordinance ("CFRO") on March 19, 2003, and sent them back with further recommendations. After brief colloquy, the Commission made and ratified the following motions on the proposed CFRO amendments:

Motion 03-04-14-13 (Melbostad/McCoy): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed amendment to Section 1.104(a) of the Campaign Finance Reform Ordinance, changing the definition of "qualifying contribution" to include only contributions of more than $10 and not more than $100.

Motion 03-04-14-14 (McCoy/Garcia): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed amendment to Sections 1.114(d) and 1.116 of the Campaign Finance Reform Ordinance, to delay the effective date of the provisions until January 1, 2004.

Motion 03-04-14-15 (Garcia/Melbostad): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed amendment to Section 1.126 of the Campaign Finance Reform Ordinance, to extend the time to three months after the award of a City contract, during which the person who enters into the contract may not make a campaign contribution to the elective officer who awarded, or the board on which the elective officer serves awarded, the contract.

Motion 03-04-14-16 (Garcia/McCoy): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the proposed title change to Section 1.162 of the Campaign Finance Reform Ordinance, so that the title would read: "Independent Expenditures for Mass Mailings."

The Commission adjourned for an eight-minute recess at 7:22 p.m.

After the recess, Anita Mayo asked the Commission to clarify the following points: (1) whether CFRO Section 1.108 refers only to candidate committees; (2) whether the Commission will adopt regulations related to "member communications; " and (3) whether proposed CFRO Section 1.135 referring to "any committee" applies only to local committees and not to state committees. Ms. Ng briefly responded to some of Ms. Mayo's questions.

- **Whether to request that the City Attorney file an Amicus Brief on behalf of the Ethics Commission in the case of *People v. Chinchilla*, case no. 2077432, in order to clarify for the appellate court the Commission's analysis of San Francisco Charter section C8.105(f) and proposed amendments to that section, which were discussed by the trial court in its opinion dismissing the counts under section C8.105(f).**

Commissioner Melbostad presented this item. The underlying case involves charges by the District Attorney that former Planning Commissioner Hector Chinchilla violated local and state conflict of interest laws during his tenure on the Planning Commission. Press reports indicated that the three charges based on violations of Charter section C8.105(f) were dismissed in part because Ethics Commission staff reports had indicated that the section was unclear.

Commissioner Melbostad said that a reporter had called him and asked whether it was accurate to say that the Commission had made a determination that Section C8.105(f) was unclear as to its application to the particular factual circumstances alleged in this case. Commissioner Melbostad said he told the reporter that no such determination had been made, and that the Commission had been reviewing Section C8.105(f) as part of a comprehensive review of all the conflict of interest laws as required by its mandate. Commissioner Melbostad added that it would be potentially "disastrous for public policy" if every time the Commission engaged in its mandated activity of reviewing the conflict of interest and other ethics laws, criminal prosecution for violations of the law could not proceed simply because the Commission had undertaken such a review.

Commissioner Melbostad said that the Commission's modification of Section C8.105(f) and the request to file an amicus brief do not imply that the Commission is taking any position or passing judgment on the alleged conduct of Mr. Chinchilla. The amicus brief would clarify for the court the scope of the Commission's work related to

recommendations to amend section C8.105(f).

In response to a question from Chairperson Planthold, Mr. Jacobs added that the City Attorney's office has not taken a position on whether an amicus brief should be filed in this case. He explained that the Charter gives the City Attorney's office the authority to make a final determination on the cases in which it will file amicus briefs. He said that the City Attorney will inform the Commission if the City Attorney decides to file a brief in this matter.

Motion 03-04-14-17 (Melbostad/Garcia): Moved, seconded, and unanimously passed (4-0): that the Commission ask the City Attorney's office to file an amicus brief to clarify for the Superior Court appellate panel the Commission's review and analysis of Charter Section 108.5(f) and proposed amendments thereto.

- Whether the Chair should designate someone other than himself to serve as liaison to the Sunshine Ordinance Task Force, pursuant to By-laws Article IV, Section 3, and if so, who should be designated.

Chairperson Planthold reported that although under the Commission's by-laws, the chair or his or her designee serves as liaison to the Sunshine Ordinance Task Force, no one has been designated to serve that role in the past. Chairperson Planthold added that while he would be a logical person to fill the role because of his prior experience with the Task Force, he did not want to preclude another commissioner from taking the role if he or she were so inclined.

In response to Commissioner McCoy's question about the responsibilities of the liaison, Chairperson Planthold said that the by-laws do not provide specific duties. He emphasized that because of potential conflicts of interest, the liaison would not attend the Task Force meetings. Both commissioners agreed to discuss further what responsibilities the role might entail.

- Whether the Ethics Commission should suggest criteria to be considered in prioritizing the order in which staff processes formal complaints, and if so, what criteria should be suggested.

Chairperson Planthold said that he had requested that this matter be placed on the agenda because he has received comments both about the length of time it takes to resolve some complaints and the shortness of time it takes to resolve others.

Ms. Vida said that staff currently follows several criteria in determining how to prioritize complaints as they are received. The criteria include but are not limited to (1) the order in which the complaint was filed, (2) the seriousness of allegations in the complaint, (3) clear evidence that a violation occurred, and (4) the possibility of expeditious settlement.

Commissioner Melbostad said that in the early years of the Commission's existence there was a realistic belief that every complaint could be investigated methodically and with an equal distribution of resources. He said that in the current budgetary environment, such an expectation is impossible, and staff has no choice but to prioritize complaints, which is what any other prosecutorial body with a significant workload and limited resources does.

Chairperson Planthold pointed out that the current operating Commission staff has one investigator, who not only investigates complaints, but also handles various administrative responsibilities (such as monitoring forms and reports filed by lobbyists and campaign consultants). He added that although there is one other funded investigative position, that position has not been filled.

Commissioner Melbostad suggested that staff explore cutting down on the length of reports it makes on complaints. Although staff currently prepares thorough written reports for each complaint it investigates, he suggested that complaints not in the Commission's jurisdiction or otherwise not as urgent a priority be summarized in single-paragraph reports.

Vice-Chairperson Garcia said that he would appreciate getting more information from staff about the division of responsibilities in the Commission office and what steps staff believes would address the problem. He added that there appears to be a definite need to "triage" complaints that are currently being investigated.

Commissioner Melbostad said that addressing this issue is critical to maintaining the Commission's credibility and to addressing the concerns that only a small number of complaints in the Commission's docket ever get to the probable cause stage.

Commissioner McCoy suggested that one way of prioritizing complaints would be to resolve complaints about current candidates first so that they do not have unanswered and publicly disseminated allegations hanging over them in the midst of running a campaign.

Chairperson Planthold said that further discussion of this issue would be valuable but will have to wait until the budget is less of a priority, perhaps in June.

- Items for future agendas.

Commissioner Melbostad suggested that consideration of the possibility of instituting an administrative appeal process for campaign finance fines to the Commission as a whole be calendared soon. He said that it was a matter that had been waiting in the wings for some time and had not yet made it onto the agenda. Chairperson Planthold said that the Commission would do its best to get the matter heard on an upcoming agenda.

Ms. Vida said that she has asked staff to prepare a report on standards that staff uses to impose campaign finance fines and to review and decide on waiver requests.

Chairperson Planthold asked whether it would be possible for staff to provide a list of the committees which currently have fines levied against them.

Ms. Vida said that staff was reluctant to publish a list of committees with pending fines to the Commission's website because of the possibility of the public misinterpreting the meaning of such a list, especially out of context.

Ms. Ng asked Vice-Chairperson Garcia whether he wanted the Commission to revisit in a future agenda the issue of recusal as introduced in the discussion of proposed CGCC Section 3.122. Vice-Chairperson Garcia said that he does want to revisit the matter but does not consider it to be a "burning issue" at present.

- Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

Vice-Chairperson Garcia asked staff to distribute with greater lead time, if possible, portions of the agenda packet that it anticipates will take considerable time for the commissioners to digest. Ms. Vida said that staff would do its best to accommodate the commissioners.

- **Adjournment.**

Motion 03-04-14-18 (McCoy/Garcia): Moved, seconded, and unanimously passed (4-0): that the Commission adjourn the meeting.

The meeting was adjourned at 8:12 p.m.

Respectfully submitted,

_____

Frank M. Lester

Campaign Finance Assistant

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING AND AGENDA

Monday, May 12, 2003, 5:30 P.M.

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the Ethics Commission meeting of April 14, 2003. (Discussion and possible action.)

IV. Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Emergency plan for backing up electronic records
9. Campaign finance audit program
10. Lobbyist program
11. Campaign consultant program
12. Statements of Economic Interests
13. Sunshine Ordinance Declarations
14. Education and outreach
15. Governmental ethics conference plans: September 2003 and December 2004

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V. Whether the Ethics Commission should establish a process whereby persons or committees that have been assessed late fines and/or forfeitures by staff may appeal to the Commission for a waiver or reduction of the fine, and if so, what the process should be. A staff report will be available from the Ethics Commission at its office and on its web site on Thursday, May 8. (Discussion and possible action.)

VI. Consideration of Board of Supervisors' Resolution No. 030585, including whether and how to implement the Resolution's mandates. Resolution No. 030585 urges the Ethics

Commission to conduct a public hearing and develop recommendations regarding procedures that would: (1) screen applicants to City commissions and for at-will employment; (2) train City commissioners and staff regarding conflict of interest and Sunshine requirements; and (3) develop additional policies to maintain ethical conduct of City commissioners and staff. A staff report and a copy of the resolution will be available from the Ethics Commission at its office and on its web site on Thursday, May 8. (Discussion and possible action.)

VII. Whether the Ethics Commission should recommend to the Board of Supervisors an amendment to the conflicts of interest amendments that were previously forwarded to the Board. The amendment would require any official making a decision about someone with whom the official has a personal relationship to disclose the nature of that relationship so that the issue of the official's recusal from the decision-making could be considered. A staff report and a copy of the resolution will be available from the Ethics Commission at its office and on its web site on Thursday, May 8. (Discussion and possible action.)

VIII. Items for future agendas. (Discussion and possible action.)

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

X. Adjournment.

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Ethics Commission >> Meeting Information

Ethics Commission

May 12, 2003

(Approved 06/9/03)

Minutes of the Regular Meeting of the

San FranciscoEthics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

May 12, 2003, 5:30 p.m.

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I. Call to order and roll call.

Chairperson Robert R. Planthold called the meeting to order at 5:30 p.m.

COMMISSION MEMBERS PRESENT: Robert R. Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Waukeen Q. McCoy, Commissioner; Michele Anglade, Commissioner. Commissioner Paul Melbostad joined the meeting in progress.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Senior Campaign Finance Auditor; Joe Lynn, Campaign Finance Officer; Oliver Luby, Fines Collection Officer.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Robert Pender, Vice-President of Parkmerced Residents Organization; Patricia Walkup.

MATERIALS DISTRIBUTED:

Agenda for the Meeting of May 12, 2003

Approved minutes of the Regular Meeting of the Ethics Commission of March 10, 2003

Draft minutes of the Special Meeting of the Ethics Commission of April 14, 2003

Executive Director's Report for the Meeting of May 12, 2003

Memo from Ginny Vida dated May 8, 2003 re: Appeals from Denials of Waiver Requests on Fines and Forfeitures

Memo from Ginny Vida dated May 5, 2003 re: Board of Supervisors Resolution No. 030585

Memo from Ginny Vida dated May 8, 2003 re: Disclosure of Personal Relationships

Letter dated February 13, 2003 and enclosed handouts from the Mayor's Office of Emergency Services re: emergency preparedness

Article from *San Francisco Chronicle*, May 9, 2003, "Judge: 'Care not Cash' initiative invalid"

Article from *San Francisco Chronicle*, May 9, 2003, "Push to give city controller more power"

Article from *USA Today*, May 5, 2003, "Campaign finance hit by ruling"

Article from *San Francisco Chronicle*, May 9, 2003, "Appeals court uphold campaign finance law

Can force disclosure on ballot measures"

Article from *Las VegasSUN*, May 4, 2003, "Campaign Finance Law Shrouded in Doubt"

- Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Robert Pender, Vice-president of the Parkmerced Residents Organization and treasurer of the campaign committee Tenants for Housing Justice, said that he has been filing campaign forms since he formed the Tenants for Housing Justice committee in 1994. Mr. Pender explained that the committee has not had any activity for the past 4-5 years and that it has a bank balance of $2,000. He said that the Ethics Commission assessed a fine against the Tenants for Housing Justice committee. He characterized the assessment as abuse.

1. **Approval of the minutes of the Ethics Commission meeting of April 14, 2003.**

Motion 03-05-12-1 (McCoy/Garcia): Moved, seconded, and unanimously passed (4-0): that the minutes of the Ethics Commission meeting of April 14, 2003be approved as drafted.

1. **Executive Director's Report**

Executive Director Ginny Vida referred the Commission to her written report. Ms. Vida reported that the Mayor will propose a budget for the Ethics Commission on June 2 and the Budget Committee will consider it on June 9 at its afternoon session.

With respect to Item 6.c. of the report, Vice-Chairperson Michael Garcia asked about the Bureau of Delinquent Revenues' ("BDR") collection procedures. Chairperson Robert R. Planthold asked whether BDR has the authority to reduce fines that were assessed by the Ethics Commission and whether the Ethics Commission would receive any money as a result of judgments that are awarded to BDR by a court. Ms. Vida said that staff would report to the Commission on these matters.

The commissioners expressed interest in attending the workshops that were mentioned in the Education and Outreach section of the report. Ms. Vida said that staff would provide the 72 hour meeting notice to the public regarding all three workshops in case more than two commissioners attend the same workshop.

- **Discussion and action re: Whether the Ethics Commission should establish a process whereby persons or committees that have been assessed fines and/or forfeitures by staff may appeal to the Commission for a waiver or reduction of the fine.**

Ms. Vida referred to the staff report dated May 8, 2003 regarding Appeals from Denials of Waiver Requests on Fines and Forfeitures, including the attachments. She directed the Commission's attention to the disclaimer that explains that the attachments are based on a working ledger, which is regularly updated. Ms. Vida explained that staff's process for considering waiver requests for fines and forfeitures consists of several layers of review and approval: Oliver Luby, Fines Collection Officer, after reviewing waiver requests and related documents, discusses the waiver requests and related information with Campaign Finance Officer Joe Lynn. Mr. Lynn reviews the material with Ms. Vida, who may consult with Deputy Executive Director

Mabel Ng before rendering a decision. In deciding on a waiver request, staff considers, in addition to factors listed on the waiver policy, mitigating factors such as whether there was public harm from failure to file, whether the treasurer was a first-time treasurer or a professional treasurer, whether the committee has a history of late filings, and whether the committee cooperated in rectifying late filings.

Ms. Vida reported that the Los Angeles City Ethics Commission ("LACEC") does not have an appeal process. The LACEC's fine policy is strict and its rate of collection is higher. Ms. Vida presented staff's recommendation that the Commission not adopt an approval process because such process would consume additional resources at a time when the Commission's current resources are being cut back due to the budget crisis. Staff recommended that the Commission assign one member to study the current process by visiting the office to review files.

In response to Commissioner Waukeen McCoy's question about whether Oakland has an appeals process, Ms. Vida explained that the Oakland Public Ethics Commission is not the filing officer for campaign statements filed in that city. Chairperson Planthold said that prior to establishing an appeals process, it would be worthwhile for the Commission members to gain a better understanding of the current process by meeting individually with staff to review sample files.

Ms. Vida and Mr. Lynn explained that prior to filing deadlines, staff sends a notice to all filers, even though such notice is not required by the Fair Political Practices Commission. Under state law, filers are obligated to understand the filing requirements. Staff also sometimes sends specific written notice, which notifies non-filers to file within a certain period or lose their right to request a waiver, as specified by state law. Chairperson Planthold added that the Commission also offers ongoing education through its workshops and manuals.

Commissioner Melbostad said that although he had voted for the current waiver policy, he believes that it is far too strict. He said that he has received complaints from filers, particularly volunteer treasurers and treasurers for low budget committees, that staff does not give enough consideration to mitigating factors.

Commissioner McCoy said that the right to an appeal process is an inherent right. He said that although staff's process includes various levels of review, an appeals process should nonetheless be established. In response to an inquiry from Commissioner Michele Anglade about a committee not able to afford to pay an assessed fine, Ms. Vida said that that staff offers an installment plan for payments. In response to a question about liability, Mr. Lynn clarified that both candidates and treasurers, including professional treasurers, are liable for a fine. Commissioner Melbostad expressed concern that if there is no appeal process to the Commission and treasurers have to pursue an action in court, they would have to prove that either the Ethics Commission acted contrary to law or that there is no evidence supporting the fine. He said they would be unlikely to prevail because these standards are very high.

Vice-Chairperson Michael Garcia expressed concern that filers who are granted waivers may not be deserving of waivers. He suggested that if the Commission were to establish an appeals process, it should set a threshold and require filers who request appeals to pay the cost of the appeal. Chairperson Planthold noted that per attachment 2 of staff's memo, 43 committees owe fines of $100 or less and 15 committees owe fines between $100 and $200. He said that if there were an appeals process, staff's time in processing fines would increase and additional time would also be required of the Commission. Commissioner Anglade said that while there would be a procedural benefit for processing even small amounts of fines, she believes that a high bar should be set, such as evidence that staff was unfair or biased before allowing an appeal.

Public Comment

Chairperson Planthold asked Mr. Pender to provide specifics about his claim of being abused by the Ethics Commission. Mr. Pender said he did not recall using the term "abuse." He re-stated his previous remarks. Mr. Pender stated that Ted Gullicksen of the Tenants Union is the committee's assistant treasurer. Chairperson Planthold suggested that Mr. Pender speak to Mr. Gullicksen about paying the outstanding fine. Mr. Pender added that Mr. Lynn advised him about completing and filing forms. Mr. Pender said that thereafter, he called the Ethics Commission office a number of times but that no one answered the phone. Chairperson Planthold noted that the Commission's general phone line is answered by staff or voicemail when staff is unavailable. He said that the City's phone system may have been inoperable at the time Mr. Pender called. Ms. Vida said that it is rare that callers are unable to get through to staff or voicemail. Mr. Pender concluded his remarks by stating that he would not pay the $200.

Fred Ridel said that if the Commission were to establish an appeals process, the bar should be set high. He added that it is not unusual that a fee be associated with appeals. He said he believes that staff is doing more than what is required to alert filers to requirements, and he does not recommend that the Commission adopt an appeal process.

Commissioner Melbostad said that the Commission should not overlook the burden of a $200 fine to limited income persons. He said that it would be a shame that the requirements are so onerous that someone like Mr. Pender may be deterred from participating in the political process.

In response to a question from Commissioner Anglade concerning the number of filers required to file on a continuing basis, Mr. Lynn explained that a committee's level of activity is not the factor that prompts the requirement to file, but rather committee's active status that prompts filing obligations. Mr. Lynn noted that the public cannot determine whether a committee has had activity until such committee files a statement disclosing its level of activity. He further explained that activity of $1,000 or more prompts the requirement to form a committee within ten days. Such

committee is then active and must continue to file statements until it terminates. A committee is eligible to terminate when its bank balance is zero, it has no debts or claims that it has no intention of paying its debts, and it has filed all its required reports. He said that staff had obtained permission from the Fair Political Practices Commission to allow retroactive termination for committees that were eligible to terminate in the past but had not terminated, so that such committees could avoid fines that may have accrued after the date the committee was eligible to terminate. Mr. Lynn also explained that state law sets fines at $10 per day per statement and limits the fine to $100 or the level of financial activity engaged in by the committee during the period covered by the late statement, whichever is greater. Mr. Lynn stated that when a local San Francisco committee has inadvertently filed its campaign statement with the Secretary of State, the Commission staff has accepted the Secretary of State's date stamp as evidence of a timely filing even though the Secretary of State was not the filing officer for the statement.

Motion 03-05-12-2 (Anglade/Garcia): Moved, seconded, and unanimously passed (5-0): that the discussion of Appeals for Denials of Waivers for Fines and Forfeitures be tabled until the Commission's June meeting.

Chairperson Planthold asked the Commissioners to inform staff about any additional comments they may have. He also asked the Commissioners to make arrangements to meet with staff to learn about the current process for reviewing waiver requests.

- Discussion and action re: Whether and how to implement Board of Supervisors' Resolution No. 030585.

Ms. Ng presented staff's recommendation that the Commission, in response to Board of Supervisors Resolution No. 0030585, conduct a public hearing at either its August or September meeting. She noted that staff would invite various groups and individuals, including appointing authorities, to the hearing. Chairperson Planthold invited the Commissioners to forward issues in writing regarding the resolution to staff. Ms. Vida said that staff would prepare a list of questions and the notice for the public hearing for distribution at the July meeting.

Public Comment

Fred Ridel, speaking on behalf of San Francisco Common Cause, expressed support for the proposal and expressed interest in becoming involved. He informed the Commission that a legislative analyst is working with a graduate student at the University of California, Berkeley to create guidelines for appointing officials. He urged the Commission to begin its work soon. Mr. Ridel suggested a workshop format rather than a formal public hearing regarding the resolution. Chairperson Planthold requested further information from Mr. Ridel about the UC Berkeley report.

- **Discussion and action re: Whether the Ethics Commission should recommend to the Board of Supervisors an amendment to the conflicts of interest amendments that were previously forwarded to the Board.**

Chairperson Planthold asked Vice-Chairperson Garcia to present the proposed amendment to the conflict of interest amendments that were previously forwarded to the Board. Vice-Chairperson Garcia stated that the principle behind the need to disclose personal relationships is transparency. Ms. Ng directed the Commission's attention to the proposed text on page 3 of the staff memo dated May 8, 2003, regarding Disclosure of Personal Relationships. Ms. Vida noted that under the proposed amendment, a commission or board could not force an official or employee to recuse himself but could approve a recusal. Ms. Ng explained that the proposed amendment codifies common law.

Public Comment

Mr. Ridel praised the proposal and asked for clarification of whether an "ownership interest" as stated in line 3 of the proposed text includes financial interest. He requested that the term "financial interest" be included in the text of the proposal.

Commissioner McCoy asked whether a City official could recuse himself without disclosing the personal relationship. Deputy City Attorney Chad Jacobs explained that the Charter requires every commission or board member to participate in a vote unless another law prohibits such participation. If there is no other law that prohibits participation, the official or employee must seek permission to recuse himself or herself. For this reason, an official or employee need only provide a level of information that is sufficient to obtain approval for recusal. Mr. Jacobs stated that the intent of the disclosure is to provide transparency.

Motion 03-05-12-3 (Anglade/McCoy): Moved, seconded, and unanimously passed (5-0): that the text of the proposed amendment be amended to include financial interest as well as ownership.

Motion 03-05-12-4 (Anglade/Garcia): Moved, seconded, and unanimously passed (5-0): that the Commission approve the proposed conflict of interest amendment, as amended.

- **Discussion and action re: Items for future agendas.**

Chairperson Planthold noted that at its June meeting the Commission will conduct the Executive Director's performance review. He suggested that the agenda also include discussion of criteria regarding the order in which formal complaints are processed.

Commissioner Melbostad asked that the Commission consider the matter of issue advertising as it relates to candidates. He explained that the Federal Court of Appeals recently upheld a provision regarding limitations on contributions to committees that pay for advertising that may include the photograph of, or mention the name of, a candidate. Chairperson Planthold requested that Commissioner Melbostad communicate this item to the Executive Director.

Chairperson Planthold noted that the Commission will consider Supervisor McGoldrick's proposal regarding establishing the City Controller as the City Services Auditor, either at its June or July meeting.

- Public Comment

Patricia Walkup asked why the Commission has not required permit expediters who appear before the Planning Commission and the Department of Building Inspection to report their activity to the Ethics Commission. Chairperson Planthold explained that Supervisor Daly and the Commission have discussed such a proposal but Supervisor Daly not yet brought it forward. Commissioner Melbostad assured Ms. Walkup that the Commission is sensitive to the issue of permit expediters and had had extensive discussion regarding the matter.

- Adjournment.

Chairperson Planthold announced that the next meeting of the Commission will be held on June 9, 2003 at 5:30 p.m. The meeting was adjourned at 7:20 p.m.

Respectfully submitted,

Shaista Shaikh

Senior Campaign Finance Auditor

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San Francisco
Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION

The San Francisco Ethics Commission will hold TWO meetings on the Commission's Campaign Finance Database. These meetings will be held on the following times and dates:

Friday, May 23, 2003
1:30 – 4:30 p.m.
Room 408, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco

Thursday, June 5, 2003
5:30 – 8:30 p.m.
Room 408, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco

At the meetings, Commission staff will conduct a workshop that will cover the function and structure of the Ethics Commission's electronic campaign finance database. Staff will give an overview of how to research and use the data that the database provides.

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Ethics Commission >> Meeting Information

Ethics Commission

May 27, 2003

(Draft 05/13/03)

Minutes of the Special Meeting of the
San Francisco Ethics Commission
(Campaign Finance Workshop)

City Hall, One Dr. Carlton B. Goodlett Place, Room 408
May 27, 2003, 12:30 p.m.

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I. Call to order and roll call.

This special meeting was convened for the purpose of presenting a workshop on campaign finance requirements to campaign filers and other interested persons. Campaign Finance Officer Joe Lynn began the workshop presentation at 12:40 p.m.

COMMISSION MEMBERS PRESENT: Robert R. Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Paul Melbostad, Commissioner.

STAFF PRESENT: Ginny Vida, Executive Director; Shaista Shaikh, Senior Campaign Finance Auditor; Joe Lynn, Campaign Finance Officer; Oliver Luby, Fines Collection Officer; Shannon Hardin, Investigator/Legal Analyst; Jen Taloa, Principal Clerk; and Frank Lester, Campaign Finance Assistant.

II. Presentation of Workshop

Mr. Lynn, Ms. Shaikh and Mr. Luby presented an overview of campaign finance reporting requirements and responded to questions and comments from participants.

The workshop was adjourned at 3:30 p.m.

Respectfully submitted,

Joe Lynn
Campaign Finance Officer

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
AND AGENDA

Monday, June 9, 2003, 5:30 P.M.

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the Ethics Commission meeting of May 12, 2003. (Discussion and possible action.)

IV. Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Emergency plan for backing up electronic records
9. Campaign finance audit program
10. Lobbyist program
11. Campaign consultant program
12. Statements of Economic Interests
13. Sunshine Ordinance Declarations
14. Education and outreach
15. Governmental ethics conferences: 2003 and 2004

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V. Consideration of Supervisor McGoldrick's proposed Charter amendment (No. 030812-2) and Supervisor Hall's proposed Charter amendment (No. 030854) establishing the City Controller as the City Services Auditor. A staff report will be available from the Ethics Commission at its office or on its web site on Thursday, June 5. (Discussion and possible action.)

VI. Whether the Ethics Commission should establish a process whereby persons or committees that have been assessed fines and/or forfeitures by staff may appeal to the Commission for a waiver or reduction of the fine, and if so, what process should be used. A staff report will

be available from the Ethics Commission at its office or on its web site on Thursday, June 5. (Discussion and possible action.)

VII. Whether the Ethics Commission should recommend to the Board of Supervisors the following amendments to the conflict of interest amendments previously forwarded to the Board (subsequently introduced as Charter amendment No. 030682): (a) delaying the effective date of the post-employment amendments; and (b) clarifying amendments to Charter sections 4.108, 4.109 and 10.101 related to the powers of the Police, Fire and Civil Service Commissions. A staff report will be available from the Ethics Commission at its office or on its web site on Thursday, June 5. (Discussion and possible action.)

VIII. Whether the Ethics Commission should suggest criteria to be considered in prioritizing the order in which staff processes formal complaints, and if so, what criteria should be suggested. This item may be continued to the July agenda pending availability of a staff report. (Discussion and possible action.)

IX. Approval of proposed performance plan which will be used for the evaluation of the Executive Director in FY 03-04. A copy of the proposed plan will be available from the Ethics Commission at its office or on its web site on Thursday, June 5. (Discussion and possible action.)

X. Items for future agendas. (Discussion and possible action.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

XIII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XIV. Closed session pursuant to Ralph Brown Act, Section 54957 and Sunshine Ordinance section 67.8, Public Employee Performance Evaluation (Executive Director Ginny Vida).

XV. Discussion and Possible Action re: Disclosure of closed session pursuant to Ralph Brown Act section 54957.1 and Sunshine Ordinance section 67.12.

Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: public employee performance evaluation (Executive Director Ginny Vida).

XVI. Adjournment.

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Ethics Commission

June 9, 2003

(Approved 7/14/03)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

June 9, 2003, 5:30 p.m.

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1. **Call to order and roll call.**

Chairperson Robert R. Planthold called the meeting to order at 5:35 p.m.

COMMISSION MEMBERS PRESENT: Robert Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Waukeen McCoy, Commissioner. Commissioner Paul Melbostad joined the meeting in progress. Commissioner Michele Anglade was excused.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Joe Lynn, Campaign Finance Officer; Oliver Luby, Fines Collection Officer.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Jerry Threet, aide to Hon. Jake McGoldrick; Robert Haaland, a representative of SEIU Local 790; Gilbert Criswell; Marc Salomon; David Pilpel.

MATERIALS DISTRIBUTED:

Agenda for Meeting of June 9, 2003

Executive Director's Report for the Meeting of June 9, 2003

Approved Minutes of Meeting of April 14, 2003

Draft Minutes of Meeting of May 12, 2003

June 5, 2003, Memo (and Attachments) from Ginny Vida re Action Item V: Consideration of Charter Amendments to Establish City Controller as City Services Auditor

June 5, 2003, Memo from Ginny Vida re Action Item VII: Additional Conflict of Interest Amendment Proposals

June 4, 2003, Memo from Ginny Vida re Action Item IX: Performance Goals

May 8, 2003, Memo from Ginny Vida, et al. re Action Item V: Appeals from Denials of Waiver Requests on Fines and Forfeitures

- Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Robert Haaland, a representative of SEIU Local 790, requested the Commission to intervene in the matter of a letter of reprimand placed in Campaign Finance Officer Joe Lynn's personnel file last December by Executive Director Ginny Vida. Mr. Haaland said that Mr. Lynn has received vague and contradictory directions which have interfered with his ability to discharge his responsibilities as Campaign Finance Officer. He asked the Commission to resolve the problem. Commissioner Paul Melbostad arrived at the end of these remarks and received a written copy of Mr. Haaland's comments.

Gilbert Criswell testified that he supported establishing a process of appeals for assessed fines and forfeitures. He said that committees with little activity bear a disproportionate burden of the Commission's enforcement of late fines.

Marc Salomon, a member of the Green Party, testified that there appeared to be no fair or vigorous enforcement of the campaign finance laws when the Commission spends it energy on collecting from small filers and not pursuing large filers who violate the law.

David Looman testified that he had been asked by a local Democratic club to assist in cleaning up its campaign reports. As a result, the club incurred fines for which Mr. Looman successfully negotiated a settlement with Commission staff. Mr. Looman said he then learned that other clubs simply ignored the filing deadlines and were not

fined. He asked if he was the only guy in town obeying the law. Chairperson Robert Planthold asked Mr. Looman to consider identifying for the Commission the names of the purported non-filers. Commissioner Paul Melbostad praised Mr. Looman for his honesty.

1. Approval of the minutes of the Ethics Commission meeting of May 12, 2003. (Discussion and possible action.)

Motion 03-06-09-1 (McCoy/Garcia): Moved, seconded, and unanimously passed (4-0): that the minutes of the Ethics Commission meeting of May 12, 2003 be approved as drafted.

IV. Executive Director's report

- Budget update
- Limited public financing program
- Legislative developments
- Advice and opinions
- Investigation and enforcement program
- Campaign finance disclosure program
- Electronic filing program
- Emergency plan for backing up electronic records
- Campaign finance audit program
- Lobbyist program
- Campaign consultant program
- Statements of Economic Interests
- Sunshine Ordinance Declarations
- Education and outreach
- Governmental ethics conferences: 2003 and 2004

Ms. Vida referred the Commission to her written report and reported that she, Chairperson Planthold and Mr. Lynn appeared before the Budget Committee earlier in the day, where one member expressed support for an increase in the Commission's budget. Ms. Vida asked Deputy Executive Director Mabel Ng to report on a meeting with the unions about the proposed conflict of interest amendments. Ms. Ng did so and reported that a second meeting had been scheduled.

In response to an inquiry from Commissioner Waukeen McCoy, Deputy City Attorney Chad Jacobs said that the appellate division of the Superior Court had granted the City Attorney permission to file an *amicus* brief in the appeal of People v. Chinchilla.

1. Consideration of Supervisor McGoldrick's proposed Charter amendment (No. 030812-2) and Supervisor Hall's proposed Charter amendment (No. 030854)

establishing the City Controller as the City Services Auditor.

Ms. Ng discussed the two proposed Charter amendments to designate the Controller as City Services Auditor. She referred the Commission to the staff memo and explained that staff had two principal concerns: first, the proposals appear to establish for the Controller duties that are already performed by the Ethics Commission; and two, some provisions potentially affect the confidentially of complaints and records that are within the jurisdiction of the Commission.

Jerry Threet, aide to Supervisor McGoldrick who authored one of the proposals, stated that an amendment will clarify that government ethics violation issues will be referred to the Ethics Commission. He explained that the intent of the proposed Charter amendment was to increase government efficiency and that the Controller's interest in auditing a matter may not the same as the Commission's; for example, the Controller may be interested in conduct that falls short of violations of the law, such as bad business practices. Thus, there are reasons for the overlap of functions. Mr. Threet also explained that Supervisor McGoldrick's version does not contain provisions whereby the Controller or his or her designee would sit in on closed sessions of the Commission; he added that the supporters of the other version were in agreement with Supervisor McGoldrick's changes.

Motion 03-06-09-2 (Garcia/Melbostad): Moved, seconded, and unanimously passed (4-0): that the recommendations of staff be adopted.

1. **Whether the Ethics Commission should establish a process whereby persons or committees that have been assessed fines and/or forfeitures by staff may appeal to the Commission for a waiver or reduction of the fine, and if so, what process should be used.**

Ms. Vida reiterated staff's recommendation against adopting an appeals process. Chairperson Planthold reported that three of the five commissioners had taken advantage of opportunities to review, separately, individual files of requests for waivers.

Commissioner Garcia said that the rules being enforced were reasonable and clear. He said that holding office and running for office entail deep responsibilities and that such persons should inform themselves of the rules and conform to them. He added that it would be a waste of time and resources to have an appeals process.

Commissioner Melbostad said he has reached the same conclusion, though he recalled his initial sympathy for committees, particularly grassroots committees with citizen

treasurers, on whom fines were imposed. He said he did not believe it was economical to have an appeals procedure and strongly urged staff to enforce fines with a view towards the purpose of the laws and not for the purpose of generating revenues.

Chairperson Planthold said that he had examined staff's work and believed that staff demonstrated extraordinary thoroughness in reviewing requests for waivers. Staff had considered each particular fine and each of the bases of the claims for waivers of the filers. Staff was neither dismissive nor off-handed. He added that the Commissioners did not need to entertain a motion if they wished to keep the process that way it is.

Commissioner McCoy stated that an appeals process is an inherent right, and that the Commission, if it monitored staff's work, could ensure consistency. Commissioner Melbostad stated that the Commission could not have an open-ended procedure and asked if there were suggestions to limit the appeals to specific threshold amounts or other grounds.

Commissioner Planthold noted that a filer still has judicial remedies available to challenge a wrongful denial of a waiver request. Mr. Jacobs confirmed that the Superior Court would be the court to lodge a writ of mandamus to seek judicial review of an allegedly wrongful denial of waiver.

Mr. Criswell testified that he had raised only $2,000 but was fined $400. He said that an appeals process to the Commission would be fair and just.

David Pilpel suggested that if the Commission adopts an appeals process, it should limit appeals to fines over $100 or $200. He added that the Commission should bar a candidate from seeking election or appointment to office, or from qualifying for public funds, unless the candidate pays all outstanding fines. He also suggested that the Commission post on its website the names of those candidates and committees who owe late fines.

Commissioner McCoy made a formal motion to implement an appeals process regarding fines to the Commission. The motion died for lack of a second.

1. **Whether the Ethics Commission should recommend to the Board of Supervisors the following amendments to the conflict of interest amendments previously forwarded to the Board (subsequently introduced as Charter amendment No. 030682): (a) delaying the effective date of the post-employment amendments; and (b) clarifying amendments to Charter sections 4.108, 4.109 and 10.101 related to the powers of the Police, Fire**

and Civil Service Commissions.

Ms. Ng referred the Commission to the staff memo on this subject, noting that there were two decisions for the Commission.

Motion 03-06-09-3 (Melbostad/Garcia): Moved, seconded, and unanimously passed (4-0): that the recommendations of staff that there be no exemption for current City officers and employees from the proposed post-employment restrictions be adopted.

Motion 03-06-09-4 (Garcia/ Melbostad): Moved, seconded, and unanimously passed (4-0): that the recommendations of staff regarding sections Charter sections 4.108, 4.109 and 10.101 related to the powers of the Police, Fire and Civil Service Commissions be adopted.

1. Whether the Ethics Commission should suggest criteria to be considered in prioritizing the order in which staff processes formal complaints, and if so, what criteria should be suggested.

The matter was continued to the July meeting. Chairperson Planthold asked the Commissioners to forward their suggestions to the Executive Director for inclusion in the report.

1. Approval of proposed performance plan which will be used for the evaluation of the Executive Director in FY 03-04.
2. Items for future agendas.

After some discussion concerning a proposed performance review plan, the Commission decided to change the proposed plan to reflect the view that the handling of complaints is critical. The Commission agreed that putting a numeric value on the handling of complaints may not be as important as the quality of the staff recommendations on specific items, particularly taking into account the size and complexity of the specific complaint. The Commission agreed to take these and other matters into consideration in conducting the performance review.

Motion 03-06-09-5 (Melbostand/Garcia): Moved, seconded, and unanimously passed (4-0): that the Proposed Pay for Performance Goals be modified so that the Executive Director will present staff recommendations to the Commission on at least 50 percent of complaints existing on June 30, 2003 within the next year,

and that this measure constitutes 20 percent of the performance evaluation; and that goals 2, 3 and 4 be modified so that each measure constitutes 15 percent of the performance evaluation; and that goal 6 be eliminated.

Motion 03-06-09-6 (Melbostad/Garcia): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the Proposed Pay for Performance Goals as modified.

Commission members discussed consideration of the priorities assigned to complaints and the procedures employed by both the Commission and the Bureau of Delinquent Revenues in collecting debt. Commissioner Melbostad recommended that the Commission consider a resolution urging implementation of Ranked Choice Voting.

Commissioner Planthold reported that the Commission might need a special meeting to consider suggestions made at the meet and confer sessions regarding the proposed conflict of interest amendments. He recommended meeting either Friday, June 20, or Monday, June 23.

1. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

Mr. Pilpel said that Ms. Vida's performance had been well-intentioned but unsuccessful in getting the Commission the resources it needs to handle the backlog of complaints. He said the confidentiality provisions regarding complaints did not serve the public well. He questioned why the Commission should host the annual conference of the Council on Governmental Ethics Laws in San Francisco next year. He asked if reports for meetings, which deal with complicated issues, could be made available earlier than the Thursday before the meeting. He encouraged greater development of the web site. He also said more public outreach and education should be considered. He added that the Commission's reports should be copied on double-sided paper.

- **Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.**

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

Chairperson Planthold announced that there would be no closed session under Item XII.

1. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

No closed session was held pursuant to item XII.

1. Closed session pursuant to Ralph Brown Act, Section 54957 and Sunshine Ordinance section 67.8, Public Employee Performance Evaluation (Executive Director Ginny Vida).
2. Discussion and Possible Action re: Disclosure of closed session pursuant to Ralph Brown Act section 54957.1 and Sunshine Ordinance section 67.12.

The Commission convened to closed session at 8:40 p.m.

The Commission re-convened to open session at 11:00 p.m.

The Commission confirmed the Executive Director's participation in the MEA Pay for Performance program in FY 02-03, based on the acceptance of the Commission's performance evaluation form by the Department of Human Resources for that purpose.

XVI. Adjournment.

The Commission adjourned its deliberations at 11:05 p.m.

Respectfully submitted,

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Joe Lynn

Campaign Finance Officer

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
AND AGENDA

Monday, June 23, 2003, 5:30 P.M.*

Room 416 City Hall*
1 Dr. Carlton B. Goodlett Place, San Francisco

***Please note change in date and room number.**

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Consideration of possible amendments to the Ethics Commission's proposed Conflict of Interest Amendments previously forwarded to the Board of Supervisors. Two meet and confer sessions with union representatives have been held to discuss the proposed Conflict of Interest Amendments. As a result of these meetings, the Commission staff has proposed several changes to the Conflict of Interest Amendments, which include possible amendments to proposed sections 15.105, 18.115, C9.101, C9.103, C9.108, C9.110, C9.112, C9.114, C9.121 and C9.125. A staff report will be available from the Commission office and on its web site on Thursday, June 19. (Discussion and possible action.)

IV. Consideration of Supervisor Daly's proposed Charter amendment (File No. 011654-2) to create the Public Advocate as a City Elective Officer and to create the Department of Neighborhood Empowerment. A staff report will be available from the Commission office and on its web site on Thursday, June 19. (Discussion and possible action.)

V. Consideration of a resolution to urge the Board of Supervisors to take all steps necessary to implement instant run-off voting as approved by the voters in the March 2002 election. (Discussion and possible action.)

VI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

VII. Adjournment.

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Ethics Commission >> Meeting Information

Ethics Commission

June 23, 2003

(Approved 7/14/03)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 416

June 23, 2003, 5:30 p.m.

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I. Call to order and roll call.

Chairperson Robert Planthold called the meeting to order at 5:35 p.m.

COMMISSION MEMBERS PRESENT: Robert R. Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Michele Anglade, Commissioner; Paul H. Melbostad, Commissioner. Commissioner Waukeen Q. McCoy was excused.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Grace Chau, Public Finance Auditor.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Duane Reno; Herb Meiberger; Winchell Hayward; Nancy W. Gin; E. David Ellington; Jean Thomas; Richard Golfee; Charles Kalish; Lucy Colvin; Steven Hill; Jonee Levy; Ted Milikin; Angela Ramsey; Emily McFarland; Richard Rothman

MATERIALS DISTRIBUTED:

Agenda for the Meeting of June 23, 2003

June 19, 2003 memo from Executive Director Ginny Vida regarding action item III, meet and confer suggestions to conflict amendment proposal

June 18, 2003 Legislative Digest (File No. 030681, third draft) regarding amending the Charter's ethics provisions to move various provisions into ordinances, to enact new provisions, to make technical changes, and to clarify ambiguities in existing provisions.

June 18, 2003 Proposed Charter Amendment (File No. 030681, third draft) regarding amending the Charter's ethics provisions to move various provisions into ordinances, to enact new provisions, to make technical changes, and to clarify ambiguities in existing provisions.

June 20, 2003 C9.108 Appointments and Nominations (proposed section C9.108 one page hand out)

June 19, 2003 memo from Executive Director Ginny Vida regarding action item IV, consideration of Supervisor Daly's proposed Public Advocate Charter amendment (File No. 011654-2)

June 11, 2003 Proposed Charter Amendment (File No. 011654, second draft) regarding Public Advocate & Department of Neighborhood Empowerment

June 23, 2003 Resolution to urge the Board of Supervisors to take all steps necessary to implement instant run-off voting system as approved by the voters in the March 2002 election.

June 20, 2003 letter from E. David Ellington to the Ethics Commission

- Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

- Consideration of possible amendments to the Ethics Commission's proposed Conflict of Interest Amendments previously forwarded to the Board of Supervisors. Two meet and confer sessions with union representatives have been held to discuss the proposed Conflict of Interest Amendments. As a result of these meetings, the Commission staff has proposed several changes to the Conflict of Interest Amendments, which include possible amendments to proposed sections 15.105, 18.115, C9.101, C9.103, C9.108, C9.110, C9.112, C9.114, C9.121 and C9.125. (Discussion and possible action.)

Deputy Executive Director Mabel Ng referred the Commissioners to a June 19, 2003 memo that contained staff's recommendations on suggestions made at two meet and confer sessions with the unions about the conflict of interest proposals. The Commission received much public comment regarding item C of the memo, dealing with section C9.108, which would ban employees from serving on boards or commissions that oversee the employee's own department. On June 19, 2003, the Rules Committee of the Board of Supervisors asked the Commission to consider an exemption for employees of the City's Retirement System.

Several members of the public testified in favor of the amendment. Duane Reno stated that the Commission's proposal is overbroad and that it abridges the employees' First Amendment right to run for office. He said that there was no conflict of interest in an employee sitting as a board member because the employee does not vote on his own salary. Winchell Hayward, Nancy W. Gin, Jean Thomas and Richard Rothman also testified in favor of the amendment. They stated that employees and retirees have a right to vote for the best qualified individual.

Herb Meiberger, a financial analyst employee of the Retirement System and elected member of the Retirement Board, asserted that he was the target of this legislation. He stated that there is no financial conflict of interest in his dual position. His salary is determined by the MOU (union contract), and the City Attorney has never advised him that he must recuse himself from voting on any issues during the eleven years he served on the board. He noted that the board's internal policy excludes him from the personnel committee, and thus he does not evaluate the Executive Director. He acknowledged that he had voted on the internal policy that prohibits him from participating in the Executive Director's evaluation.

E. David Ellington, President of the Retirement Board, provided testimony in his personal capacity and referred to a letter he had sent to the Commission. He stated that he supported the Commission's proposed provision because it ensures that a clear chain of command exists and enables the department to function efficiently. He pointed out that a board member who is also an employee of the department would still be able to make comments on the Executive Director's performance in an open session even though he does not vote. Mr. Ellington stated that allowing an individual to handle dual roles has caused morale problems. He said it is difficult for a supervisor to criticize or manage employees who sit on the board that oversees the supervisor.

At Chairperson Planthold's request, Ms. Ng reported that there had been discussion during the meet and confer sessions on whether the Retirement Board and Health Services Board should be exempted from the Commission's proposal. It was determined that the Health Services Board does not oversee the executive director.

Chairperson Planthold stated that he did not feel comfortable carving out any specific body from the broad applicability of law. He said that it is good public policy to prohibit a staff member becoming a policy maker making policies that would affect

himself. He added that although the retirement board does not have the authority to fire the current Executive Director, who has civil service protection, the successor will be hired or fired at the will of the members of the Retirement Board.

Staff noted that the proposed ban will not affect the elected officeholder's current term. Commission members also emphasized that the proposal has universal application and was not aimed at any one particular individual but resulted from the Commission's overall review of all the conflict of interest laws over the past several meetings. Commissioner Anglade suggested that the employee could still serve on the retirement board if he or she made a lateral transfer to another City department. Commissioner Garcia stated that there is a potential conflict of interest whenever a member of staff oversees someone who oversees the staff. Executive Director Ginny Vida noted that the clear line of authority as mentioned in Mr. Ellington's letter is very important. She said it would be very confusing if a department head had to manage a staff member who oversees the department.

Motion 03-6-23-1 (Garcia/Anglade): Moved, seconded, and passed unanimously (4-0): that the Commission affirm its previous position on section C9.108 and that it not support the version as suggested by the Rules Committee.

Chairperson Planthold suggested that members of the public forward their concerns to the Rules Committee at its next hearing.

Motion 03-6-23-2 (Garcia/Anglade): Moved, seconded, and passed unanimously (4-0): that the Commission adopt the entire package of recommendations as proposed by staff.

- **Consideration of Supervisor Daly's proposed Charter amendment (File No. 011654-2) to create the Public Advocate as a City Elective Officer and to create the Department of Neighborhood Empowerment.**

Ms. Vida referred the Commission to a staff memo and stated that commissioners had previously voted unanimously that the Commission recommend to Rules Committee that the Public Advocate not be allowed to attend closed session of the Ethics Commission. She pointed out that the Charter provides that complaints filed with the Ethics Commission are confidential and that there is no reason for the Public Advocate to attend a closed session to which he/she would not bring expertise into play. She added that as an elected official, the Public Advocate is necessarily political, whereas the Commission is intended to be a politically neutral body.

Motion 03-6-23-3 (Garcia/Melbostad): Moved, seconded, and passed unanimously

(4-0): that the Commission adopt staff recommendations to oppose the attendance of the Public Advocate at the Commission's closed sessions.

- **Consideration of a resolution to urge the Board of Supervisors to take all steps necessary to implement instant run-off voting as approved by the voters in the March 2002 election.**

Commissioner Melbostad proposed this resolution because he saw overlap between the implementation of instant run-off elections and the Commission's efforts to carry out the public's wish to limit the amount of independent spending. He said staff's research, per his request, indicated that the amount of independent expenditures increases dramatically in the run-off election. Outside special interest groups pour in large amounts of money attempting to influence the election, and that this spending overwhelms the will of average San Franciscans who contributed to an individual campaign. Commissioner Melbostad added that he was not suggesting that the Commission get involved in the specifics of implementing Proposition A, the ballot measure that the voters passed to support instant run-off voting.

Several members of the public - Charles Kalish, Lucy Colvin, Steven Hill, Jonee Levy, Ted Milikin, Angela Ramsey and Emily McFarland -- testified in favor of the resolution. They stated that in a run-off election, huge independent expenditures from unknown sources or outside the City may thwart the will of the people of San Francisco. Because people often do not know that there is a run-off election, officers are elected by significantly fewer people; instant run-off voting may increase voter turnout.

Motion 03-6-23-4 (Garcia/Anglade):Moved, seconded, and passed unanimously (4-0): that the Commission endorse the resolution put forward by Commissioner Melbostad.

- **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

- **Adjournment.**

Chairperson Planthold announced that the next special meeting scheduled for June 25 will be cancelled because the Commission was able to finish its agenda business at

today's meeting. The next regular meeting of the Commission will be held on July 14.

The meeting was adjourned at 7:34 p.m.

Respectfully submitted,

_____

Grace Chau

Public Finance Auditor

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
AND AGENDA

Monday, July 14, 2003, 5:30 P.M.

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the Ethics Commission meetings of June 9, 2003, and June 23, 2003. (Discussion and possible action.)

IV. Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach
14. Governmental ethics conferences: 2003 and 2004
15. Possible cancellation of August Commission meeting.

V. Whether the Ethics Commission should suggest criteria to be considered in prioritizing the order in which staff processes formal complaints, and if so, what criteria should be suggested. A staff report will be available from the Commission office and on its web site on Thursday, July 10. (Discussion and possible action.)

VI. Proposed response to the Report of the 2002-2003 Civil Grand Jury ("CGJ") entitled, "Preferential Treatment Persists in a Department Marked by Political Pressures and a Leadership Void: Civil Grand Jury Report on the Management of the Department of Building Inspection." The Ethics Commission is required to respond to five

recommendations contained in the CGJ report by August 11, 2003. Copies of a staff report and the CGJ Report will be available from the Commission office and on its web site on Thursday, July 10. (Discussion and possible action.)

VII. Consideration of the request of the Elections Commission President for a determination by the Ethics Commission, under Charter section 13.104.5, whether a proposed ballot measure to combine the Police and Sheriff Departments will have a "material financial effect" on the Sheriff or uniformed personnel in his office, and consideration of whether to delegate the obligation to make determinations under Charter section 13.104.5 to the Executive Director of the Ethics Commission. A staff report will be available from the Commission office and on its web site on Thursday, July 10. (Discussion and possible action.)

VIII. Application of the limitations on political activities of Ethics Commission members and staff to invitations to educate the public about the Commission's proposed Charter amendment to strengthen and clarify local governmental ethics laws and rules. The Rules Committee of the Board of Supervisors has recommended the Charter amendment to the full Board. The Board will consider placing the Charter amendment on the November 2003 ballot. (Discussion and possible action.)

IX. Whether the August 11, 2003 meeting of the Ethics Commission should be cancelled. See Item IV.15 of the Executive Director's Report for the July 14, 2003 meeting. (Discussion and possible action.)

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XI. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 3

XII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XIII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

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SAN FRANCISCO ETHICS COMMISSION NOTICE OF REGULAR MEETING AND AGENDA

Monday, July 14, 2003, 5:30 P.M.

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the Ethics Commission meetings of June 9, 2003, and June 23, 2003. (Discussion and possible action.)

IV. Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach
14. Governmental ethics conferences: 2003 and 2004
15. Possible cancellation of August Commission meeting
16. Summer interns

V. Informal report (suggestions and questions) from the Chair of the Sunshine Ordinance Task Force on liaison with the Ethics Commission. (Discussion.)

VI. Whether the Ethics Commission should suggest criteria to be considered in prioritizing the order in which staff processes formal complaints, and if so, what criteria should be suggested. A staff report will be available from the Commission office and on its web site on Thursday, July 10. (Discussion and possible action.)

VII. Proposed response to the Report of the 2002-2003 Civil Grand Jury ("CGJ") entitled, "Preferential Treatment Persists in a Department Marked by Political Pressures and a Leadership Void: Civil Grand Jury Report on the Management of the Department of Building Inspection." The Ethics Commission is required to respond to five recommendations contained in the CGJ report by August 11, 2003. Copies of a staff report and the CGJ Report will be available from the Commission office and on its web site on Thursday, July 10. (Discussion and possible action.)

VIII. Consideration of the request of the Elections Commission President for a determination by the Ethics Commission, under Charter section 13.104.5, whether a proposed ballot measure to combine the Police and Sheriff Departments will have a "material financial effect" on the Sheriff or uniformed personnel in his office, and consideration of whether to delegate the obligation to make determinations under Charter section 13.104.5 to the Executive Director of the Ethics Commission. A staff report will be available from the Commission office and on its web site on Thursday, July 10. (Discussion and possible action.)

IX. Application of the limitations on political activities of Ethics Commission members and staff to invitations to educate the public about the Commission's proposed Charter amendment to strengthen and clarify local governmental ethics laws and rules. The Rules Committee of the Board of Supervisors has recommended the Charter amendment to the full Board. The Board will consider placing the Charter amendment on the November 2003 ballot. (Discussion and possible action.)

X. Whether the August 11, 2003 meeting of the Ethics Commission should be cancelled. See Item IV.15 of the Executive Director's Report for the July 14, 2003 meeting. (Discussion and possible action.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 3

XIII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XIV. Adjournment.

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Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724; Fax: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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Ethics Commission >> Meeting Information

Ethics Commission

July 14, 2003

(Draft 8/18/03)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

July 14, 2003, 5:30 p.m.

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1. **Call to order and roll call.**

Chairperson Robert R. Planthold called the meeting to order at 5:32 p.m.

COMMISSION MEMBERS PRESENT: Robert Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Michele Anglade, Commissioner; Paul Melbostad, Commissioner. Commissioner Waukeen McCoy was excused.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shannon Hardin, Investigator/Legal Analyst; Oliver Luby, Fines Collection Officer.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney. Deputy City Attorney Claire Sylvia joined the meeting.

OTHERS PRESENT: Garrett Jenkins, Sunshine Ordinance Task Force; Richard Matthews, 2002-2003 Civil Grand Jury; Anita Mayo, Pillsbury Winthrop.

MATERIALS DISTRIBUTED:

Agenda for Meeting of July 14, 2003

Executive Director's Report (with Attachments) for the Meeting of July 14, 2003

Approved Minutes of Meeting of May 12, 2003

Draft Minutes of Meeting of June 9, 2003

Draft Minutes of Special Meeting of June 23, 2003

July 10, 2003, Memo (and Attachments) from Ginny Vida re Action Item VII: Proposed Response to 2002-2003 Grand Jury Report

July 10, 2003, Memo from Ginny Vida re Action Item VIII: Whether a Proposed Ballot Measure Will Have a Material Financial Effect on the Sheriff

July 9, 2003, Memo from Ginny Vida re Action Item VI: Whether the Commission Should Suggest Criteria to be Considered in Prioritizing the Order in which Staff Processes Complaints

Memo from the City Attorney's office: (1) San Francisco Charter Sec. 15.100 and (2) Prohibition on Political Activity by City Officers and Employees

June 11, 2003, Report from 2002-2003 Civil Grand Jury: Preferential Treatment Persists in Department Marked by Political Pressures and a Leadership Void - Civil Grand Jury Report on the Management of the Department of Building Inspection

July 10, 2003, Invitation to speak letter from Winchell Hayward, President of Local 21 Retirees Guild, to Chairperson Bob Planthold

July 13, 2003, San Francisco Chronicle article: Carpeneti gained much from mayor's summits for women

- Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

1. Approval of the minutes of the Ethics Commission meetings of June 9, 2003, and June 23, 2003.

Motion 03-07-14-1 (Garcia/Melbostad): Moved, seconded, and unanimously passed (4-0): that the minutes of the Ethics Commission meetings of June 9, 2003, and June 23, 2003, be approved as drafted.

IV. Executive Director's report

- Budget update
- Limited public financing program
- Legislative developments
- Advice and opinions
- Investigation and enforcement program
- Campaign finance disclosure program
- Electronic filing program
- Campaign finance audit program
- Lobbyist program
- Campaign consultant program
- Statements of Economic Interests
- Sunshine Ordinance Declarations
- Education and outreach
- Governmental ethics conferences: 2003 and 2004
- Possible cancellation of August Commission meeting
- Summer interns

Executive Director Vida referred the Commission to her written report. She reported that the electronic filing system had malfunctioned for a few days over one weekend, but that the problem had been promptly remedied. She also reported that the San Francisco Planning & Urban Research Association (SPUR) had requested a presentation regarding the Commission's proposed Charter amendment on conflicts of interest.

Commissioner Melbostad asked about the justification for a substantive change made by the Board of Supervisors to the proposed Charter amendment. Ms. Vida said that the Board did not specifically explain its reasoning, but she noted that Supervisor Ammiano conferred with union representatives and then introduced the changes. The substantive change was deletion of a provision to bar departmental employees from serving on the board or commission that oversees the department where they are employed. She said that Supervisor Ammiano, when he introduced the substitute legislation at the Board, invited the Ethics Commission to work with his office in the future to address the issue concerning departmental employees and other issues that may involve a conflict of interest, such as whether the Mayor may appoint a member of his staff to serve on a board or commission overseeing a City department.

Chairperson Planthold asked about the briefing schedule regarding the appellate division of the Superior Court granting the City Attorney permission to file an amicus brief on behalf of the Ethics Commission in the appeal of People v. Chinchilla. Deputy City Attorney Jacobs said that the City Attorney's Office is still waiting to hear from the Court about a briefing schedule.

Chairperson Planthold also asked about the breakdown of the electronic filing system. Ms. Vida said she had been informed by a DTIS representative that the breakdown was indirectly related to a virus affecting City servers, although the

Commission's own server had not been infected.

Chairperson Planthold asked how much staff time will be saved due to the SQL server upgrade. Ms. Vida said that at some point in the future the staff will be relieved of the burden of entering data by hand into the campaign finance database from paper reporting forms for which no electronic reporting forms currently exist. She said it would be possible to estimate how much staff time will be saved, but time savings would not be realized until the Commission secures funding for, and DTIS develops, late contribution and independent expenditure forms for the electronic filing program. The time savings will therefore be long range.

Chairperson Planthold also mentioned footnote no. 5 from an earlier report [May 8, 2003, Memo on Appeals from Denials of Waiver Requests], which indicated that some committees have not filed required campaign disclosure reports. He requested a list of these committees.

Vice-Chairperson Michael Garcia thanked Fines Collection Officer Oliver Luby for his report on the San Francisco Bureau of Delinquent Revenues (BDR), attached to the Executive Director's Report. Vice-Chairperson Garcia expressed interest in exploring, during a future meeting, legislation that would require delinquent filers to pay for the costs of collection on their accounts. He also said he would like staff to explore adoption of BDR's collection procedures and thereby avoid losing the 25% on the accounts currently referred to BDR.

1. Informal report (suggestions and questions) from the Chair of the Sunshine Ordinance Task Force on liaison with the Ethics Commission. (Discussion.)

Garrett Jenkins, Chair of the Sunshine Ordinance Task Force, made an informal presentation to the Ethics Commission about the importance of government agencies making information available to the public. He also raised two matters: (1) That, pursuant to its bylaws, the Ethics Commission establish a Task Force liaison; (2) That the Ethics Commission give greater priority to complaints referred by the Task Force and greater reliance on the determinations made by the Task Force regarding those complaints. Because using a court is prohibitively expensive and the Task Force does not have investigative staff other than one administrator, Mr. Jenkins noted that the Ethics Commission is one of the practical tools available for enforcing the Sunshine Ordinance. Mr. Jenkins said that there is no need for Ethics to completely rehear an item that has been decided by the Task Force, and there is no reason that a complaint referred to Ethics should be outstanding for a year.

Commissioner Melbostad thanked Mr. Jenkins for his comments. He noted that there had once been a proposal for the Ethics Commission to provide staffing for the Task Force, but such assistance was not possible because the Ethics Commission was already woefully under-funded and understaffed. He noted that Ethics was not likely

to be able to provide such assistance in the future. Mr. Jenkins said that the Task Force is already looking into having its own staff.

Commissioner Melbostad asked if there was anything that would preclude Ethics from taking into account findings made by the Task Force. Deputy City Attorney Jacobs said that the Commission needs to take into account the function of the two different bodies. He said the Task Force examines whether the item must be disclosed under the Ordinance, while Ethics examines whether there was willful non-disclosure and whether failure to disclose constitutes official misconduct. He also said that the Commission can take Task Force determinations into account, but that most of the time it must make its own conclusions in order to provide adequate due process.

Commissioner Melbostad requested information about whether the City Attorney's office can bring a Sunshine Ordinance action on behalf of the Task Force or independently. Deputy City Attorney Jacobs said there is no question that the City Attorney's office represents the Task Force, but he was not sure whether the City Attorney has independent authority to bring such an action.

The Commissioners considered the possibility of further discussing this matter at a future meeting. Vice-Chairperson Garcia suggested to Mr. Jenkins that the Commissioners might further address the issue during the next agenda item this evening, but Mr. Jenkins was unable to remain at the meeting for that item.

1. **Whether the Ethics Commission should suggest criteria to be considered in prioritizing the order in which staff processes formal complaints, and if so, what criteria should be suggested.**

Investigator/Legal Analyst Hardin referred the Commission to the July 9, 2003, memo on this agenda item. Hardin noted that, at the request of the former Chairperson, Carol Kingsley, staff prioritized the oldest complaints first. However, Ms. Hardin also noted that staff considered other criteria for prioritizing complaints, including whether there is a clear violation on the face of a complaint, the apparent public harm (serious nature of the allegations), and the ease of settling or disposing of the complaint.

Vice-Chairperson Garcia said that there is already the assumption that the staff is using a system that it feels is best. However, he suggested setting up a tickler system so that complainants are given regular updates on the status of their complaints, such as every 6 months or so. Ms. Vida said this would be helpful to the complainants, but noted that it would take time away from investigating complaints. Ms. Hardin also noted that a letter is sent to complainants when the complaint moves into a formal investigation, but in view of the Charter's confidentiality provisions, staff does not provide further information if a complainant calls requesting specific details.

Chairperson Planthold noted that the staff report showed that many of the complaints received are not in the Commission's jurisdiction. He asked staff if there was any way to tell people how to better shape their complaints or teach them that the Ethics Commission is not necessarily where they should file their complaints. Ms. Vida said that the complaint form was once revised to encourage filing of jurisdictional complaints. She also said that staff, in interviewing complainants, informs them if their complaint is clearly outside of the Commission's jurisdiction, and this may result in withdrawal of the complaint. Ms. Hardin noted that there is a disclaimer on the complaint form and the website. She said that she tries to help people understand what violations can be alleged and to whom they should direct their complaints. She said that people may believe that their complaints receive more attention if they are referred by the Commission to another agency rather than filed directly by the complainant with that agency.

Chairperson Planthold asked that staff consider giving complainants the opportunity to let staff know that they do not want their complaints forwarded because they fear retribution by the agency receiving the referred complaint. Ms. Hardin noted that the complaint form states that complaints, if outside the Commission's jurisdiction, will be forwarded to an appropriate agency.

Commissioner Melbostad suggested that the Commission shift its handling of complaints to a prosecutorial discretion mode such as that used by the District Attorney's office. He noted that the DA's office posts daily lists of charged cases which it will not be investigating.

Ms. Vida noted that the Los Angeles City Ethics Commission staff has the authority to dismiss complaints and that such an option might help the San Francisco Commission's staff expedite processing of complaints. The Commissioner's discussed revising the investigation and enforcement regulations to expedite complaint processing, but they also acknowledged that current limitations on staff time would make such a revision difficult. The Commissioners asked staff to consider making recommendations in the future. The Commissioners also agreed to encourage staff to be bolder with complaints, exercising discretion to dismiss more complaints or write shorter reports as necessary, because limited resources preclude staff from giving each complaint the same degree of care and consideration.

1. Proposed response to the Report of the 2002-2003 Civil Grand Jury ("CGJ") entitled, "Preferential Treatment Persists in a Department Marked by Political Pressures and a Leadership Void: Civil Grand Jury Report on the Management of the Department of Building Inspection." The Ethics Commission is required to respond to five recommendations contained in the CGJ report by August 11, 2003.

Ms. Vida reviewed the proposed responses to five recommendations made by the

2002-2003 Civil Grand Jury.

Richard Matthews, a 2002-2003 Civil Grand Jury member, expressed his appreciation for the Commission's timely response. He noted that the proposed response, though in very carefully considered language, was supportive of the CGJ's recommendations.

After some discussion, the Commission approved the proposed response to the 2002-2003 CGJ report.

Motion 03-07-14-2 (Garcia/Anglade): Moved, seconded, and unanimously passed (4-0): that the staff's proposed response to the Report of the 2002-2003 Civil Grand Jury be approved and submitted to the CGJ.

1. **Consideration of the request of the Elections Commission President for a determination by the Ethics Commission, under Charter section 13.104.5, whether a proposed ballot measure to combine the Police and Sheriff Departments will have a "material financial effect" on the Sheriff or uniformed personnel in his office, and consideration of whether to delegate the obligation to make determinations under Charter section 13.104.5 to the Executive Director of the Ethics Commission.**

Deputy Executive Director Mabel Ng summarized the July 10, 2003, staff memo on this item. She noted that, while the intent of the relevant Charter section appears to be to avoid conflicts of interest, the section does not define "material financial effect." She explained that the Commission could follow the state law definition of "material financial effect" but that it was not bound by it. She said staff believes that under state law, the only financial interest that might be reached by the ballot measure is the economic interest of the Sheriff and his staff in their personal income from City salary, which is not considered a financial interest under state law. Ms. Ng further noted that staff believes that the common law duty of loyalty to the public is not implicated because the financial effects of the measure are remote and speculative. Finally, Ms. Ng noted that if the Commission were to find that the ballot measure has a material financial effect on the Sheriff and his uniformed personnel, the Department of Elections would be required to develop an alternative transportation and security plan for the election ballots, at considerable expense to the City and County.

After some discussion, the following motion was voted on but not approved:

Motion 03-07-14-3 (Melbostad/Garcia): Moved, seconded, and not passed (2-2) (Garcia and Anglade opposing): that the Commission (1) find that the proposed ballot measure to combine the Police and Sheriff Departments will not have a "material financial effect" on the Sheriff or uniformed personnel of the Sheriff's

office and (2) delegate the obligation to make further determinations under Charter section 13.104.5 regarding this proposed Charter amendment to the Executive Director.

Commissioners Anglade and Garcia expressed concern that merging the Police Department and Sheriff's office would have a material financial effect on the Sheriff's office, since the proposed merger might well affect the employment and thus the salaries of personnel in both departments. They stated that the Commission does not have sufficient information to be able to say that there would be no material financial effect from such a merger. The discussion clarified that the effect of the ballot measure would be to create a committee which, if it were able to make certain authorized findings, would then merge the Police Department and the Sheriff's office; the proposed ballot measure would not directly result in the merger of the two departments. The Commission considered alternate language suggested by Anita Mayo. The Commissioners then agreed that the language of the ballot measure, as written, would have no material financial effect on the Sheriff's office, but the Commission also agreed that it would not make a determination on whether a material financial effect would be possible if eventually there was a merger.

Motion 03-07-14-4 (Melbostad/Garcia): Moved, seconded, and unanimously passed (4-0): The Ethics Commission finds that as written, the proposal in File No. 030865 would not have a material financial effect on the Sheriff or the uniformed personnel of the Sheriff's department within the meaning of Charter section 13.104.5. The Ethics Commission makes no finding as to whether or not an eventual merger of the Sheriff and Police departments might have a material financial effect on the Sheriff or the uniformed personnel of the Sheriff's department.

Motion 03-07-14-5 (Garcia/ Melbostad): Moved, seconded, and unanimously passed (4-0): that the Commission delegate the obligation to make further determinations under Charter section 13.104.5 regarding this proposed Charter amendment to the Executive Director.

IX. Application of the limitations on political activities of Ethics Commission members and staff to invitations to educate the public about the Commission's proposed Charter amendment to strengthen and clarify local governmental ethics laws and rules. The Rules Committee of the Board of Supervisors has recommended the Charter amendment to the full Board. The Board will consider placing the Charter amendment on the November 2003 ballot. (Discussion and possible action.)

Chairperson Planthold reported that the Local 21 Retirees Guild had invited him to speak about the proposed Charter amendment that the Commission had submitted to the Board of Supervisors (See letter to Chairperson Planthold from President Hayward of Local 21 Retirees Guild, in Materials).

Deputy City Attorney Jacobs made a presentation on the restrictions on political activity by Ethics Commissioners and referred the Commission to a handout that included (1) the text of San Francisco Charter Sec. 15.100 and (2) a memo on Prohibition on Political Activity by City Officers and Employees. Mr. Jacobs said that if the Commission's Charter amendment is placed on the ballot, Commissioners may accept invitations to make presentations regarding the Commission's proposed Charter amendment that are "limited to an accurate, fair, and impartial presentation of relevant facts to aid voters in reaching an informed judgment regarding the measure." Mr. Jacobs noted that all City employees are prohibited from engaging in political activities during working hours or using City resources for political purposes. In addition, Ethics Commission employees and Commissioners may not participate in or endorse any ballot measure or candidate that appears on the local ballot. Thus, even while giving a presentation on a proposed Charter amendment submitted by the Commission, the Commissioners may not advocate approval or defeat of the corresponding ballot measure. The Commission discussed some hypothetical examples with counsel. Mr. Jacobs suggested making a presentation similar to those made before the Rules Committee of the Board, where the reasons for the Charter amendment are simply stated.

X. Whether the August 11, 2003 meeting of the Ethics Commission should be cancelled. See Item IV.15 of the Executive Director's Report for the July 14, 2003 meeting.

Motion 03-07-14-6 (Melbostad/Garcia): Moved, seconded, and unanimously passed (4-0): that the August 11, 2003, meeting of the Ethics Commission be cancelled.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

XII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 3

Chairperson Planthold announced that there would be no closed session.

XIII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

Since a closed session was not held, the above motion was not addressed.

XIV. Adjournment.

The Commission adjourned its deliberations at 8:28 p.m.

Motion 03-07-14-7 (Garcia/Anglade): Moved, seconded, and unanimously passed (4-0): that the July 14, 2003, meeting of the Ethics Commission be adjourned.

Respectfully submitted,

Oliver Luby

Fines Collection Officer
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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
REGULAR MEETING
FOR

Monday, August 11, 2003, 5:30 P.M.

Agenda

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING AND AGENDA

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Monday, September 8, 2003, 5:30 P.M.

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Approval of the minutes of the Ethics Commission meetings of May 27, 2003, and July 14, 2003. (Discussion and possible action.)**

IV. **Executive Director's report**
1. **Budget update**
2. **Limited public financing program**
3. **Legislative developments**
4. **Advice and opinions**
5. **Investigation and enforcement program**
6. **Campaign finance disclosure program**
7. **Electronic filing program**
8. **Campaign finance audit program**
9. **Lobbyist program**
10. **Campaign consultant program**
11. **Statements of Economic Interests**
12. **Sunshine Ordinance Declarations**
13. **Education and outreach**
14. **Governmental ethics conferences: 2003 and 2004**
15. **Ten-year anniversary program**
16. **Workforce planning project.**

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V. **Public hearing pursuant to Board Resolution No. 030585 re: 1) screening of applicants for City commissions and at-will employment; 2) training of City commissioners and staff regarding conflict of interest and Sunshine requirements; and 3) developing additional policies to maintain ethical conduct of City commissioners and staff. Copies of Resolution No. 030585 and a hearing notice will be available from the Ethics Commission office on Thursday, September 4. (Discussion.)**

VI. **Approval of draft report to the Mayor and the Board of Supervisors on initial implementation of the program to provide limited public financing to qualified candidates for the Board of Supervisors in the 2002 election. Under Proposition O, approved by the**

voters in 2000, the Ethics Commission is required to provide a public financing report to the Mayor and the Board following each election at which members of the Board are elected. Copies of the draft report will be available from the Commission office and on its web site on Thursday, September 4. (Discussion and possible action.)

VII. Whether the Ethics Commission should waive the attorney-client privilege for a memorandum from the City Attorney's Office concerning Proposition G (2002), which limits the political activity of Commission members and staff. (Discussion and possible action.)

VIII. Whether the Ethics Commission should suggest criteria to be considered in prioritizing the order in which staff processes formal complaints, and if so, what criteria should be suggested. (Discussion and possible action.)

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

X. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 3

XI. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: pending litigation.

XII. Adjournment.

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Ethics Commission >> Meeting Information

Ethics Commission

September 08, 2003

(Approved 10/14/03)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

September 8, 2003, 5:30 p.m.

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1. Call to order and roll call.

Chairperson Robert Planthold called the meeting to order at 5:35 p.m.

COMMISSION MEMBERS PRESENT: Robert Planthold, Chairperson; Waukeen McCoy, Commissioner; Michele Anglade, Commissioner; Paul Melbostad, Commissioner. Vice-Chairperson Michael Garcia was excused.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shannon Hardin, Investigator/Legal Analyst; Shaista Shaikh, Public Finance Administrator; Kevin De Liban, Staff Assistant.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Shanan Alper; Michael Goldstein, board member of the Harvey Milk LGBT Democratic Club; Mike Houscher, Commission Secretary, Library Commission.

MATERIALS DISTRIBUTED:

Agenda for Meeting of September 8, 2003

Executive Director's Report for the Meeting of September 8, 2003

Approved Minutes of Meeting of June 9, 2003

Approved Minutes of Special Meeting of June 23, 2003

Draft Minutes of May 27, 2003

Draft Minutes of Meeting of July 14, 2003

Advice Letter to James Sutton dated August 12, 2003

Advice Letter to Rob Black dated August 15, 2003

August 13, 2003, Memo from Ginny Vida re Notice of Public Hearing re Board of Supervisors Resolution No. 030585

Draft Report on the Limited Public Financing Program

September 8, 2003, Memo from Ginny Vida re Whether the Commission should suggest criteria to be considered in prioritizing the order in which staff process formal complaints, and if so, what criteria should be suggested

September 8, 2003, New York Times article: The Case for McCain-Feingold

September 8, 2003, New York Times article: Clout Shifts With the Change in Campaign Finance Rules

- Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

1. Approval of the minutes of the Ethics Commission meetings of May 27, 2003, and July 14, 2003.

Commissioner Paul H. Melbostad requested that the second sentence of paragraph 3 on page 5 of the minutes of July 14, 2003 meeting be amended as follows:

He noted that the DA's office posts ~~daily lists of charged cases which it will not be investigating~~ *a computer printout of defendants whose cases are calendared that day, but it has decided not to charge. It is not required to do a report or provide any explanation of why it has decided not to charge a case even though a criminal arrest was made.*

Motion 03-09-08-1 (Melbostad/Anglade): Moved, seconded, and unanimously passed (4-0): that the minutes of the Ethics Commission meeting of July 14, 2003, be approved as amended.

Motion 03-09-08-2 (Melbostad/McCoy): Moved, seconded, and unanimously passed (4-0): that the minutes of the Ethics Commission meeting of May 27, 2003, be approved as drafted.

IV. Executive Director's report

Executive Director Vida referred the Commission to her written report. Ms. Vida directed the Commission's attention to two articles from the New York Times on the Supreme Court's hearing regarding the McCain-Feingold law.

1. **Public Hearing pursuant to Board Resolution No. 030585 (Discussion.)**

Chairperson Robert Planthold noted that pursuant to Board of Supervisors Resolution No. 030585, the Ethics Commission was conducting a public hearing to develop recommendations and procedures to: 1) screen applicants for City commissions and at-will employment; 2) provide training to City commissioners and staff regarding conflict of interest and Sunshine requirements; and 3) develop additional policies to maintain the ethical conduct of City commissioners and staff. Chair Planthold referred to the report prepared by students of the Goldman School of Policy at UC Berkeley regarding the process of commission appointments.

Shanan Alper explained that at the Board's request, he and his colleagues performed a study of the commission appointments process. Their report recommends formalizing the appointments process by: 1) establishing a broad-based Appointment Committee that would oversee all charter and department commission appointments during the Mayor's transition period; and 2) appointing a Commission Appointments Secretary for commission appointments during the remainder of the Mayor's term. The report also recommends that interested candidates complete a Statement of Economic Interests (SEI) prior to appointment so that the Appointment Committee

could ensure that there are no conflict of interest issues to disqualify the appointee from serving on a commission.

In response to Commissioner Waukeen McCoy's inquiry, Mr. Alper reported that an Appointment Committee has been used by the past five administrations.

Commissioner Paul Melbostad, speaking from his experience on Mayor Agnos' transition committee, noted that the Appointment Committee process does not take away power from the Mayor. He reported that the process of ensuring broad representation on commissions was difficult and that it was facilitated by the transition team. He questioned whether requiring applicants to complete a SEI prior to appointment may require a change in law. In response to Commissioner Michele Anglade's question whether he sensed that applicants may resist completing a SEI prior to appointment, Mr. Alper said no but that he had not directly asked interviewees that question.

Ms. Vida asked whether Mr. Alper anticipates that all appointments would be made by the end of February (within the first few weeks of the Mayor taking office). Mr. Alper explained that appointments to key agencies would be made first and that the Appointment Committee's task of screening applicants for all agencies could take a few months. Chair Planthold reported that in 1995, Mayor Brown's Appointment Committee was set up by late December and was conducting interviews so that when the Mayor took office, he was able to fill several positions. Chair Planthold stated that an Appointment Committee does not lessen the Mayor's power because the Mayor is not required to accept the Appointment Committee's recommendations.

There was some discussion about the reluctance of applicants to complete the Form 700 (Statement of Economic Interests) prior to appointment. Commissioner McCoy asked whether an applicant's SEI could remain private until the applicant is appointed. Commissioner Melbostad stated the Appointment Committee would not be subject to Sunshine laws and therefore SEIs would not be public records. Deputy City Attorney Claire Sylvia explained that the two were separate questions: 1) whether the SEIs are public documents; and 2) whether the Appointment Committee is subject to open meeting laws. Chair Planthold noted that it might be difficult to keep SEIs that are otherwise public documents private. He suggested that applicants be given a blank form for study, which in turn could be used as an educational tool.

In response to Commissioner Anglade's inquiry, Mr. Alper explained that the Appointment Committee should consist of representatives from various community groups, including the Mayor's opponents. Mr. Alper said he hopes that the appointment process would be written into law. Asked whether the report took into account the appointment processes of other jurisdictions, Mr. Alper stated that very few jurisdictions are similar to San Francisco. He added that while attempts were made to speak with other groups, only the ones listed in the report provided input.

Public Comment

Mike Houscher, Commission Secretary of the Library Commission, stated that the report failed to list the Library Commission as one of the Charter commissions. Mr. Houscher stated that he has had positive experiences with appointment committees. He suggested identifying conflicts of interest where they can be most problematic. Chair Planthold told Mr. Houscher that he (and anyone else wishing to comment on the item) could also provide written comments to the Commission. With no further public comment, Chair Planthold closed the public hearing.

Chair Planthold asked staff to prepare a report and make recommendations based on comments received at the public hearing. Commissioner Melbostad stated that based on his experience, he agreed with the recommendations that were presented in the report. He recommended that members of the Appointment Committee be educated on the work performed by the commissions so that they may be able to educate applicants and screen for conflicts of interest.

At 6:10 p.m., the Commission took a 10 minute recess to allow members time to review the September 8, 2003 memo from staff regarding Agenda Item VIII.

1. **Approval of draft report to the Mayor and the Board of Supervisors on initial implementation of the program to provide limited public financing to qualified candidates for the Board of Supervisors in the 2002 election.**

Commissioner Melbostad noted that candidates informally reported to him that public funds helped them to communicate their views with voters and that the public financing program increased the discussion of the issues amongst candidates.

Motion 03-09-08-3 (Melbostad/McCoy): Moved, seconded, and unanimously passed (4-0): that the report on the public financing program be approved as drafted.

1. **Whether the Ethics Commission should waive the attorney-client privilege for a memorandum from the City Attorney's Office concerning Proposition G (2002), which limits the political activity of Commission members and staff.**

Motion 03-09-08-4 (McCoy/Anglade): Moved, seconded, and unanimously passed (4-0): that the Commission not waive its attorney-client privilege related to the November 14, 2002 memorandum from the City Attorney regarding Proposition G,

and that the Commission clarify that it is not the Commission's policy to disclose privileged and confidential memoranda.

1. Whether the Ethics Commission should suggest criteria to be considered in prioritizing the order in which staff processes formal complaints, and if so, what criteria should be suggested.

Commissioner Melbostad stated that given the Commission's limited resources, it needs to balance and prioritize complaints in terms of the best public interest. He stated that complaints (concerning candidates) that are received before an election should be resolved prior to the election so that any action taken by the Commission on the complaint would be relevant to voters when voting. He stated that it is difficult to remove persons from office after they have been elected.

He said that the most important deterrent effect on candidates is the stigma that they may have violated the law, adding that penalties are not significant deterrents, especially if they are imposed after an election. He said that the Commission should not send out a message that a respondent candidate will get a free ride because it is too political too handle a complaint; on the other hand, he acknowledged that staff should not handle a complaint if it is frivolous. He said that certain complaints can be resolved easily, and that it is more important to handle a complaint involving a current candidate than it is a complaint involving what the candidate did two years ago. He suggested that complaints involving candidates and issues in a current election be given a higher priority.

Ms. Vida stated that at the last meeting, the Commission identified three areas to determine how to prioritize complaints: 1) the seriousness of the issue (i.e., degree of public harm); 2) the ease with which the matter could be resolved (i.e., nonfilings); and 3) the age of the complaint. She stated that for the Commission to identify another priority, one that is based on whether the complaint is filed against a candidate prior to an election, would jeopardize the Commission's neutrality. She reported that the Los Angeles Ethics Commission, the Fair Political Practices Commission and the Oakland Ethics Commission do not prioritize candidate-related complaints during an election because to do otherwise would politicize the process. Ms. Vida expressed concern that prioritizing candidate-related complaints would invite candidates to involve the Commission in the political process by filing complaints against opponents. She stated that the Commission would not be able to resolve all candidate-related complaints prior to an election and thus may appear to be unfair to some candidates. She also stated that the Commission should not be used as a tool and that the voters want the Commission to remain politically neutral. She noted that the first area of priority, seriousness, includes factors such as public harm and amount in controversy; thus, if the alleged violation is serious enough it will be prioritized. She added that if the Commission were to prioritize candidate-related complaints, it should not do so now in the middle of an election because such action may appear to be politically motivated. She cautioned that the impetus for the Commission's decision should not be to expedite a particular complaint.

Commissioner Melbostad stated that to the extent that violations are reporting violations, there is not much benefit to the public if the complaint is resolved after the election. He clarified that he was not suggesting that the rule apply to all candidate-related complaints or that there is a rigid formula. He added that if settlements are reached without an admission of liability, at least that will gain compliance with the law and the public can take that into account. In response to Ms. Vida's question whether it would be political for the Commission to pursue a complaint about a failure to disclose and then make an announcement, Commissioner Anglade responded affirmatively. Commissioner McCoy stated that he did not believe that expediting candidate-related complaints would cause the Commission to be involved in politics.

Michael Goldstein, board member of the Harvey Milk LGBT Democratic Club, testified that if penalties imposed by the Commission are to have a real effect, they must be timely. Mr. Goldstein asked the Commission to consider prioritizing current complaints in a campaign cycle so that it could be effective and fair to candidates and voters.

At 7:38 p.m., the Commission took a recess to allow Commissioner Melbostad time to form his motion. At 8:00 p.m. the Commission continued its meeting.

Commissioner Anglade stated that in light of the concern regarding the current election, that the resolution not be effective until after the 2003 elections, i.e., January 1, 2004. Commissioner Melbostad responded that the Commission is not mandating that staff take action on complaints against candidates, merely that the respondents' status as a candidate be considered a factor in weighing the seriousness of a complaint.

Motion 03-09-08-5 (Melbostad/McCoy): Moved, seconded, and unanimously passed (4-0): Resolved, in prioritizing action on complaints, including complaints against candidates in a current election when considering the factor of the seriousness of the allegation, the staff factor in the following: 1) in the case of a complaint alleging a failure to report information required to be reported to the Commission, the importance to the public of having the information reported before the election; and 2) in the case of a complaint alleging other types of violations of laws within its jurisdiction, whether the respondent is a candidate in the current election.

IX. Public Comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

Motion 03-09-08-6 (McCoy/Anglade): Moved, seconded, and unanimously passed (4-0): that the open session of the September 8, 2003, meeting of the Ethics Commission be adjourned so the Commission could convene in closed session.

The Commission adjourned its open session of the meeting at 8:18 p.m. to adjourn to closed session.

X. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 3

XI. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion 03-09-08-7 (Melbostad/McCoy): Moved, seconded, and unanimously passed (4-0): that pursuant to Charter section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

XIV. Adjournment.

Chair Planthold announced the next regularly scheduled meeting of the Commission falls on a holiday. Therefore, the next meeting will be held on Tuesday, October 14 at 7:00 p.m. in Room 421 at City Hall instead.

Motion 03-09-08-8 (Anglade/McCoy): Moved, seconded, and unanimously passed (4-0): that the September 8, 2003, meeting of the Ethics Commission be adjourned.

The Commission adjourned its deliberations at 8:50 p.m.

Respectfully submitted,

Shaista Shaikh

Public Finance Administrator
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Ethics Commission

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Phone 581-2300 Fax 581-2317

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING AND AGENDA

Friday, October 3, 2003, 5:30 P.M.*

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

*Please note change in day.

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.**

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

IV. **Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.**

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: pending litigation.

V. **Consideration of whether the spending limit in the November 4, 2003 District Attorney's race was lifted in accordance with applicable local law; and whether the Commission should re-impose the spending limit in the District Attorney's race. (Discussion and possible action.)**

VI. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

VII. **Adjournment.**

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING AND AGENDA

Tuesday, October 14, 2003, 7:00 P.M.*

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

*Please note change in day and time. Please also note that after 8:00 p.m., City Hall will be accessible only via the Grove Street entrance.

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Approval of the minutes of the Ethics Commission meeting of September 8, 2003; and special meeting of October 3, 2003. (Discussion and possible action.)**

IV. **Executive Director's report**
1. **Budget update**
2. **Limited public financing program**
3. **Legislative developments**
4. **Advice and opinions**
5. **Investigation and enforcement program**
6. **Campaign finance disclosure program**
7. **Electronic filing program**
8. **Campaign finance audit program**
9. **Lobbyist program**
10. **Campaign consultant program**
11. **Statements of Economic Interests**
12. **Sunshine Ordinance Declarations**
13. **Education and outreach**
14. **Governmental ethics conferences: 2003 and 2004**
15. **Status of electronic data/email security**

V. **Consideration of whether the spending limit in the November 4, 2003 District Attorney's race was lifted in accordance with applicable local law; and whether the Commission should re-impose the spending limit in the District Attorney's race. This item is continued from the October 3, 2003 meeting. (Discussion and possible action.)**

VI. **Approval of proposed recommendations to the Board of Supervisors and the Mayor pursuant to Board Resolution No. 030585 re: 1) screening of applicants for City commissions and at-will employment; 2) training of City commissioners and staff**

regarding conflict of interest and Sunshine requirements; and 3) developing additional policies to maintain ethical conduct of City commissioners and staff. The Commission conducted a public hearing on the above matters at its September 8, 2003 meeting. A copy of the staff report and proposed recommendations will be available from the Commission office and on its web site on Thursday, October 9. (Discussion and possible action.)

VII. Consideration of what type of commemoration/celebration the Ethics Commission should have to mark its tenth anniversary and its accomplishments, and to review its early expectations and future directions(s); and when such a commemoration/celebration should be scheduled. [The voters approved a Charter amendment in November 1993 creating the Ethics Commission.] (Discussion and possible action.)

VIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

IX. Adjournment.

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Ethics Commission

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REVISED 10/10/03

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING AND AGENDA

Tuesday, October 14, 2003, 7:00 P.M.*

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

*Please note change in day and time. Please also note that after 8:00 p.m., City Hall will be accessible only via the Grove Street entrance.

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the Ethics Commission meeting of September 8, 2003; and special meeting of October 3, 2003. (Discussion and possible action.)

IV. Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
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12. Sunshine Ordinance Declarations
13. Education and outreach
14. Governmental ethics conferences: 2003 and 2004
15. Status of electronic data/email security

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V. Approval of proposed recommendations to the Board of Supervisors and the Mayor pursuant to Board Resolution No. 030585 re: 1) screening of applicants for City commissions and at-will employment; 2) training of City commissioners and staff regarding conflict of interest and Sunshine requirements; and 3) developing additional policies to maintain ethical conduct of City commissioners and staff. The Commission

conducted a public hearing on the above matters at its September 8, 2003 meeting. A copy of the staff report and proposed recommendations will be available from the Commission office and on its web site on Thursday, October 9. (Discussion and possible action.)

VI. Consideration of what type of commemoration/celebration the Ethics Commission should have to mark its tenth anniversary and its accomplishments, and to review its early expectations and future directions(s); and when such a commemoration/celebration should be scheduled. [The voters approved a Charter amendment in November 1993 creating the Ethics Commission.] (Discussion and possible action.)

VII. Consideration of hiring outside counsel to represent the Ethics Commission in Terence Hallinan, et al, v. SF Ethics Commission, et al, Case No. CPF-03-503662 (SF Super. Ct.), regarding Commission action on spending limit in the District Attorney's race and related enforcement action. (Discussion and possible action.)

VIII. Possible closed session held pursuant to Government Code section 54956.9 and San Francisco Administrative Code section 67.10(d).

Conference with Legal Counsel: Existing litigation
(Subdivision(a) of section 54956.9)

Terence Hallinan, et al. v. SF Ethics Commission, et al., Case No. CPF-03-503662 (SF Super. Ct.)

IX. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: Pursuant to San Francisco Administrative Code section 67.12(a), the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: pending litigation.

X. Consideration of whether the spending limit in the November 4, 2003 District Attorney's race was lifted in accordance with applicable local law; and whether the Commission should re-impose the spending limit in the District Attorney's race. This item is continued from the October 3, 2003 meeting. (Discussion and possible action.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

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Ethics Commission

October 14, 2003

(Approved 12/8/03)

Minutes of the Regular Meeting of the

San Francsico Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 416

October 14, 2003

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- **Call to order and roll call.**

Chairperson Robert Planthold called the meeting to order at 7:07 p.m..

COMMISSION MEMBERS PRESENT: Robert Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Michele Anglade, Commissioner; Paul Melbostad, Commissioner; Waukeen McCoy, Commissioner.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Kevin De Liban, Campaign Finance Assistant.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OUTSIDE COUNSEL TO THE ETHICS COMMISSION: Debra Cauble, Assistant County Counsel, Office of the Santa Clara County Counsel.

OTHERS PRESENT: Joe Lynn; Oliver Luby; David Pilpel; Marc Salomon; Mary Louise

Lovett; Ben Rosenfeld; Eric Allen; Julie Soo; Roger Gordon; James Sutton; Steve Levin; John Jones; Richard Beleson; Terrence Hallinan; Margeurite Thompson-Brown; Jim Stearns; Pam Smith; Patrick Hoge; Christine Linnenbach; Mike Ege; Sonia Melara; Richard Ow; Larry Griffin; Bridget Bane.

MATERIALS DISTRIBUTED:

Agenda for Meeting of October 14, 2003

Executive Director's Report for the Meeting of October 14, 2003

Draft Minutes of the Special Meeting of October 3, 2003

Draft Minutes of the Regular Meeting of September 8, 2003

Minutes of the Regular Meeting of July 14, 2003

October 14, 2003 Memorandum from Ginny Vida and Mabel Ng to members of the Ethics Commission regarding the lifting of the spending limits in the District Attorney's race

October 9, 2003 Memorandum from Ginny Vida and Mabel Ng to members of the Ethics Commission regarding Board of Supervisors Resolution No. 030585

October 9, 2003 San Francisco Chronicle article: Harris Playing Catch-up in 3-way Race to Be D.A.

October 8, 2003 San Francisco Bay Guardian article: Campaign Watch

October 8, 2003 San Francisco Bay Guardian article: A Sleazy Ethics Deal

October 7, 2003 San Francisco Chronicle article: Harris Violated S.F. Campaign Finance Law

October 7, 2003 Daily Journal article: Harris Will Pay $34,000 for Spending Too Much

October 7, 2003 Recorder article: Harris Pays $34K Settlement in Ethics Flap

October 6, 2003 San Francisco Chronicle article: Davis Needs Big Last-minute Boost To Defeat Recall

October 4, 2003 San Francisco Chronicle article: Loopholes Doom Donation Limits in Recall

October 3, 2003 San Francisco Examiner article: Fazio Blasts Harris for Campaign

Over-spending

Commissioner McCoy, on a point of personal privilege, stated that he took exception to a comment that the Ethics Commission is packed with Harris supporters, as reported in an October 7 Daily Journal article and attributed to Commissioner Melbostad. Commissioner McCoy stated that he had not endorsed Kamala Harris for District Attorney. Commissioner Melbostad stated that the words "packed with Harris supporters" had not come from him and that the journalist had not properly reported his words.

- **Public comment on matter appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

Sonia Melara expressed surprise that the Ethics Commission was arguing again over the spending limits, since she thought the ceilings had been lifted. She urged the Commission to stick to its decision.

David Pilpel stated that a Recorder article of October 3 states that James Sutton had been retained by the Harris campaign as its treasurer but that no amended statement of organization had been filed to date.

Marc Salomon suggested that the Ethics Commission reorder its agenda and decide Item X before deciding Item VII, since the outcome of VII could rest on the decision of item X.

Richard Beleson expressed concern about the settlement with the Harris for District Attorney Committee. He described a doorhanger on which Harris acknowledges an error in agreeing to limit campaign spending in 1/8 inch print on the very top of the doorhanger. The remainder features Harris' name and picture. He expressed doubt about the fairness of this remedy.

- **Approval of the minutes of the Ethics Commission meeting of September 8, 2003 and special meeting of October 3, 2003.**

Motion 03-10-14-1 (McCoy/Anglade): Moved, seconded, and unanimously passed (5-0): to approve the minutes for the meeting of September 8, 2003.

Concerning page 3 of the October 3 minutes, Commissioner Anglade said the minutes should read: "Commissioner Anglade thanked the public for its comments and also saw factual ambiguities" instead of "Commissioner Anglade thanked the public for its comments and stated that she sees an ambiguity in sections 1.134(a) and (b)."

Mr. Pilpel stated that the October 3, 2003 minutes do not properly report the vote of the closed session of that meeting.

Commissioner Anglade said that research is required to determine whether that vote must be disclosed and suggested that the Commission table the minutes until the next meeting. Chairperson Planthold asked whether the Commission should table just the portion in question or the entire draft of the minutes. Vice-Chair Garcia made a motion to accept minutes as written except for the part on the bottom page 4, which would be reconsidered at the next meeting on November 10, 2003.

Motion 03-10-14-2 (Garcia/Anglade): Moved, seconded, and unanimously passed (5-0): to accept the draft minutes for the October 3 meeting as drafted except for Motion 03-10-03-5.

- Executive Director's Report

Executive Director Vida invited questions and comments about the report. Chairperson Planthold announced that on September 8, 2003, the Commission entered into an agreement to settle a complaint with former Assessor Doris Ward for the amount of $5,000 without a determination of liability.

Vice-Chair Garcia inquired about page 3, item 6.c regarding the referral of accounts to the San Francisco Bureau of Delinquent Revenues. He asked if the Commission had received an outline of the Bureau of Delinquent Revenues' procedures so that the Commission could adopt them. He also asked whether the Commission could tack on legal costs for collection. Ms. Vida said she would inquire with staff.

During public comment, Mr. Pilpel noted the 2.5% and 5% proposed contingency budget cuts and stated that, in the past, budget cuts have always been the purview of the full Commission, not just the chairperson and executive director. Ms. Vida responded that these were contingency budget proposals that all city departments were required to identify. She said there had not been sufficient time to bring them before the full Commission, so she had consulted with the chairperson. Mr. Pilpel noted that the longstanding, overwhelming workload of the Commission could be

exacerbated by newly vacant staff positions. He recommended that when budget cuts are proposed in the future, there should be a full hearing. Mr. Pilpel also suggested that the Executive Director's Report list the committees that have been fined to demonstrate that the Commission is working affirmatively to collect fines. He added that the amount of waiver for each fine should be included.

Commissioner McCoy asked if staff is setting up any more workshops on electronic filing since the two that were scheduled were cancelled. Ms. Vida responded that they were cancelled because only one person had signed up. Interested persons have met with staff on an individual basis to receive training.

- **Approval of proposed recommendations to the Board of Supervisors and the Mayor pursuant to Board Resolution No. 030585 re: 1) screening of applicants for City commissions and at-will employment; 2) training of City commissioners and staff regarding conflict of interest and Sunshine requirements; and 3) developing additional policies to maintain ethical conduct of City commissioners and staff.**

Ms. Vida noted staff's report on this subject and recounted that at the Commission's September 8 meeting, students from the UC Berkeley Goldman School of Public Policy had testified about their study and offered recommendations. Deputy Director Ng highlighted one difference between the students' report and the Commission's recommendations, noting that the Commission is recommending that the Form 700 be filed after the initial screening phase, whereas the students had recommended that the Form 700 be filed at the beginning of the process. Ms. Vida also underscored the importance of a commission appointments secretary who could keep track of all appointments to City boards and commissions, not just mayoral appointments. This would enable the Ethics Commission to identify all appointees who are required to file the Form 700.

Mr. Pilpel noted that since the Form 700 is currently not required until after the appointment is made, it is difficult to know if there is any conflict of interest during the appointment process. He said it would help if potential conflicts of interest could be known before the appointment is made.

Motion 03-10-14-3 (Melbostad/Garcia): moved, seconded, and unanimously passed (5-0): to adopt the recommendations set forth by staff.

- **Consideration of a celebration the Ethics Commission should have to mark its tenth anniversary.**

Chairperson Planthold presented his proposal for a 10th anniversary celebration of the Ethics Commission, which was created through voter approval of a Charter amendment in 1993. This unfunded celebration would reflect upon the expectations of the voters and potential new directions for the Commission. The Commission delayed discussion of this issue until the end of the meeting.

Motion 03-10-14-4 (Melbostad/Garcia): moved, seconded, and unanimously passed (5-0): to continue the discussion of Item VI to the end of the agenda.

After discussing Item X, the Commission took up Item VI and adopted the following motion:

Motion 03-10-14-16 (Planthold/Garcia): moved, seconded, and unanimously approved (5-0): that Item VI be continued to the next meeting of the Ethics Commission.

- Consideration of hiring outside counsel to represent the Ethics Commission in Terence Hallinan, et al, v. SF Ethics Commission, et al, Case No. CPF-03-503662 (SF Superior Court), regarding Commission action on spending limits in the District Attorney's race and related enforcement action.

Commissioner Melbostad moved to consider Item X out of courtesy to the public. In response to Chairperson Planthold's request, Debra Cauble of the Santa Clara County Counsel's office advised that the Commission could entertain the request, but pointed out that the Commission might wish to receive advice in closed session before moving on to Item X. In response to Commissioner Melbostad's question whether the Commission could take public comment at this time on Item X but wait on consideration of Item X until later, Ms. Cauble responded that this would pose no problem. Commission Melbostad moved to consider Item X; Commission Garcia offered a friendly amendment to hear testimony from members of the public who might not be able to stay until the Commission's consideration of Item X after the closed session.

Motion 03-10-14-5 (Melbostad/Garcia): moved, seconded, and unanimously passed (5-0): that the Commission receive public comment on Item X from members of the public who are unable to stay until the Commission's consideration of Item X after the closed session.

The Commission took public comment on Item X, which is reported under Item X. The Commission then moved to consider Item VII.

Chairperson Planthold explained that on Friday, October 10, 2003, the Commission was served with a writ action to compel the Commission to re-impose the expenditure ceilings and assess a larger fine. Because of a conflict of interest in the Harris matter, the City Attorney's office had recused itself. Thus, the Santa Clara County Counsel's Office had represented the Commission without cost. Chairperson Planthold said that due to the extra resources necessary to represent the Commission in a hearing, counsel will have to start charging at a rate of $185 per hour. Chairperson Planthold urged continuance of representation by Ms. Cauble because she was familiar with the Commission and the issues, and because the hearing date was the next day. Chairperson Planthold proposed to authorize an expenditure with a limit of $10,000 from the current budget that may be reallocated for this purpose. He asked the Commission to entertain a motion to retain Santa Clara County Counsel and enter into a contract for an amount not to exceed $10,000. Vice-Chair Garcia so moved. Commissioner Melbostad seconded, but asked about the source of the funds and why San Mateo County Counsel could not advise the Commission. Executive Director Vida responded that San Mateo County Counsel had been advising staff without charge, but that now, due to the lawsuit, the Commission must pay for these services.

Commissioner Melbostad stated that it sounded as though the Commission had no choice but to hire counsel tonight. He asked to defer the decision about where the money comes from until later, suggesting that the Commission had the option of making the case for getting another department to pay for the legal costs—the department that would normally represent the Commission. Chairperson Planthold stated that the Commission cannot hire counsel without identifying a source of funds, which Ms. Vida noted were currently available in proposed contingency cuts. Therefore, Chairperson Planthold said that deferring the decision about where the money comes from would not be possible.

During public comment, Mr. Salomon, Mr. Pilpel, Ms. Thompson-Brown, and Mr. Beleson spoke. Mr. Salomon said that more vigorous enforcement would give the Commission the money necessary for a lawsuit. Mr. Pilpel raised the issue that since the City Attorney recused itself and offered outside counsel, the funds should be allocated from the City Attorney. Chairperson Planthold said this might be a matter for future action. Ms. Thompson-Brown expressed disbelief that the Commission was going to take funds saved by cutting staff and spend it in this manner. Mr. Beleson remarked that it is a shame the City has to incur $10,000 in expenses because someone cheated on the rules.

Motion 03-10-14-6 (Garcia/Melbostad): moved, seconded, and unanimously passed (5-0): to retain Santa Clara County Counsel and enter into a contract for an amount not to exceed $10,000.

- **Possible closed session held pursuant to Government Code section 54956.9 and San Francisco Administrative Code section 67.10 (d).**

Motion 03-10-14-7 (McCoy/Anglade): moved, seconded, and unanimously approved (5-0): to adjourn to closed session.

The Commission adjourned to a closed session at approximately 8:35 p.m. on October 14, 2003. Chairperson Planthold, Vice-Chair Garcia, Commissioners Anglade, McCoy and Melbostad, and Ms. Cauble attended the closed session.

The Commission re-adjourned to open session at approximately 10:05 PM.

- Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

During public comment, Mr. Salomon said that the public should know the advice that was given by counsel. Eric Allen noted that the public is at a disadvantage and that it is not fair to lock the public out summarily.

Commissioner Anglade stated that she appreciated the time and concern of the public and added that everyone was laboring with difficult issues. However, she said that the Commission is not required to waive its Attorney-Client Privilege because of public interest.

Motion 03-10-14-8 (Garcia/McCoy): moved, seconded, and unanimously approved (5-0): that pursuant to San Francisco Administrative Code section 67.12(a), the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations regarding pending litigation.

- Consideration of whether the spending limit in the November 4, 2003 District Attorney's race was lifted in accordance with applicable local law; and whether the Commission should re-impose the spending limit in the District Attorney's race. This item was continued from the October 3, 2003 meeting.

Earlier in the evening , the following persons offered public comment: Marie Louise Lovett, Richard Ow, Larry Griffin, Julie Soo, Bridget Bane, Margeurite Thompson-Brown, Mike Ege, John Jones, and Roger Gordon.

Ms. Lovett, Mr. Ow, Ms. Soo, Ms. Thompson-Brown and Mr. Gordon said that the ceilings should not be reinstated. Ms. Lovett said that the matter had been settled and should be left as determined on October 3, 2003. Mr. Ow mentioned that it is costly to communicate a message in a city with residents who speak so many different languages and that whatever amounts a candidate raises indicates community support. Ms. Soo stated that Harris had taken corrective measures. She also expressed concern over a possible conflict of interest on the part of Commissioner Melbostad and urged Commissioner Melbostad to consider recusing himself. She argued that there is a difference between the intent and the impact of the law, suggesting that the law gives an advantage to incumbents, who do not need name recognition. Ms. Thompson-Brown, a campaign worker for Ms. Harris, noted that the mistake was an honest one, as seen from inside the campaign. She wondered why the Commission would reverse a decision it had already made. Mr. Gordon asked that the Commission not do anything that would limit the public's choice. He said that to rob the public of the right to choose would do a disservice to the public's concern, interest, and faith in the process.

Mr. Griffin, Mr. Ege and Mr. Jones advocated that the Commission reinstate the ceilings. Griffin noted that he appreciates the need for money, but after one signs the voluntary limit, he or she should abide by it. Griffin also pointed out that the District Attorney is the top law enforcement person in the City and a candidate for that office should not be easily confused by the law. Mr. Ege urged the Commission to remember the original intent of the law, which would be lost if the ceilings were not re-imposed. Mr. Jones questioned staff's analysis of the *Buckley v. Vallejo* case as reflected in the October 14 memorandum. Also, he noted that the integrity of an election is questionable if the rules are changed midstream in favor of a candidate who outspends her rivals by a two-to-one margin. He stated that one should not profit by one's own wrong.

Ms. Bane said that she did not know whether she was arguing for or against re-imposing the ceilings. She expressed confusion about the manner in which the decision was reached. She pointed to page 5 in the Stipulation, which states that there was factual evidence that the Harris campaign was confused. Ms. Bane questioned what factual evidence existed. She added that this was the only campaign that was confused. She added that it does not matter whether a campaign believes it rejected or accepted the limits. She could not find anything in the law that suggests a campaign has the right to reject the limits if the limits have been previously accepted.

After discussion of Item IX, Commissioner Melbostad proposed a prepared resolution, which stated that pursuant to Campaign and Governmental Conduct Code section 1.134, the expenditure ceiling had not been lifted and that contrary to the press release, notice be given that the expenditure ceiling had not been lifted. The motion failed due to a lack of a second.

Public comment was taken from David Pilpel, Richard Pilson, James Sutton, Ben

Rosenfeld, Eric Allen, Terence Hallinan, Marc Salomon, Julie Soo, Christine Linnenbach, and John Jones.

Mr. Pilpel stated that in response to a Sunshine Ordinance request, he had received 2 documents—a memo from the Center for Governmental Studies and a memo from Campaign Finance Officer Joe Lynn discussing whether the Commission should have lifted the ceiling. He stated that these should be made available to the public, noting that they contain uncontested facts that have not been put out to the public.

Mr. Sutton, attorney for the Harris campaign, said that Commission staff took appropriate action in lifting the limits, citing significant changes in the law that led staff and the campaign to believe that the campaign could reject the ceilings in August. After Mr. Sutton's three minutes of speaking time were finished, Commissioner Anglade made a motion to extend Mr. Sutton's speaking time.

Motion 03-10-14-9 (Anglade/McCoy): moved, seconded, and unanimously approved (5-0): to extend the speaking time for public comment to five minutes per speaker.

Mr. Sutton continued, noting that when there exists an ambiguity in the facts, the law requires the City to resolve in favor of the First Amendment. Vice-Chair Garcia asked Mr. Sutton why have his candidate accept the limit if he believes the limit tramples First Amendment rights. Mr. Sutton replied that there is political pressure placed on candidates to accept them. He noted that in every citywide race, the limits have been lifted. Part of what plays into the decision to accept the limits, Mr. Sutton said, is the knowledge that the limits will be lifted.

Mr. Rosenfeld, attorney for the plaintiffs in Hallinan et al., noted that if there was any confusion created by the change in law, it was not after the Commission's July 29, 2003 letter to candidates, which plainly stated that the new form (accepting or declining the spending limits) does not supercede the old. He also charged that staff's memo explaining the decision to lift the limits was made to serve the interests of a particular candidate. He said that there was ample evidence that the campaign was not confused but was looking for a way out of the restrictions. Ms. Vida made a point of personal privilege, stating that she took exception to the assertion that there was any intent by staff to favor a particular candidate. She added that staff looked exclusively at the law and the arguments and concluded that it was required to lift the limits, leaning towards the First Amendment because of ambiguities.

Mr. Allen asked why the Harris campaign had not called the Ethics Commission to clear up any confusion regarding the expenditure ceilings and the campaign's acceptance or rejection of them. He also brought a doorhanger upon which is printed Harris' disclaimer that she did not accept the spending limit. He noted the small print font and the ease with which the disclaimer can be ripped off from the

rest of the doorhanger.

District Attorney Terrence Hallinan stated that the Commission was flippant when it lifted the limits. He said that he sees no place in the law that says a candidate who has accepted the ceilings can later reject them. He said he wrote these laws and did not intend for a candidate to be able to reject the ceiling after accepting it. He said if a candidate violates the law, that candidate must pay a penalty of three to one to the City. He said that lifting the limits is unfair to him and to Bill Fazio and to the voters. Commissioner McCoy asked whether Mr. Hallinan's campaign experienced any confusion in July regarding the form indicating acceptance or rejection of the expenditure ceilings. Mr. Hallinan stated that his campaign saw no confusion in July, though it was pointed out that a new form accepting the limits was submitted. Commissioner McCoy asked Mr. Hallinan whether staff has the authority to lift the cap if, hypothetically, staff determined that there was a rejection of the spending limits. Mr. Hallinan replied that if a candidate rejected the cap and then went over 100 percent of the limits, those conditions would lift the cap. He advocated re-imposing the ceilings.

Mr. Salomon alleged that Mr. Sutton has nearly unfettered access to the City Attorney's Office and the Ethics Commission executive staff that other members of the public do not have. He warned that if the ceilings are considered lifted, the Commission is opening up a chance for all candidates in the future to challenge their acceptance of the ceilings.

Ms. Soo noted that there were significant changes to the law, including a change in the penalties. A change in the penalties has a significant impact on whether a candidate would accept the limits.

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Ms. Linnenbach highlighted the potential long-term implications of the Commission's decision. She said that the Commission will be sending notice that any candidate can change his or her mind. She noted that out of 18 candidates that filed forms accepting or rejecting the ceilings, only one candidate—Ms. Harris, an attorney—got it wrong. She notes that the law is unambiguous that the acceptance is irrevocable. She provided four exhibits to the Commission: the writ of mandate, an October 3 document written by Campaign Finance Officer Joe Lynn, the resolution that Commissioner Melbostad introduced, and the Harris committee's doorhanger referred to earlier by Mr. Beleson and Mr. Allen.

Mr. James stated that the Commission does not have the power to challenge the constitutionality of the ordinance that it is charged with enforcing, yet it seems to be doing so in the October 14 memorandum.

Mr. Pilpel said that as early as June 30, the Harris campaign had received contributions in excess of the limit. If the campaign had intended to decline the

limit, it should have filed the 24-hour notice of exceeding the expenditure ceiling at that time.

After close of public comment, Chairperson Planthold stated that he believed the Commission was stuck in uncharted territory, and that he was not comfortable with letting the limits remain lifted. However, he asked how the Commission could address the amount of money that had been raised thus far and the commitments for expenses that had been made prior to tonight's meeting.

Commissioner Anglade proposed to separate the discussion into two issues. First, were the limits properly lifted in accordance with the law? Second, should the limits be re-imposed?

Motion 03-10-14-10 (Anglade/Garcia): moved, seconded, and unanimously approved (5-0): that the Commission bifurcate the discussion and resolution of agenda item X.

Commissioner Anglade offered a second motion: that staff had the authority to make the determination regarding the lifting of the limits and that staff did not abuse its discretion. Commissioner McCoy seconded the motion.

Vice-Chair Garcia stated that the law is clear that if you opted out, the limits may be raised. He added that changes in law created enough confusion so that staff could conclude that Harris opted out, which does not mean that he supported staff's decision. With respect to the requirement that the limits be lifted within 24 hours, Vice-Chair Garcia said that until all the facts are decided, the clock does not begin to tick.

Commissioner Melbostad asked Joe Lynn, Campaign Finance Officer, to speak before the Commission. Chairperson Planthold responded that public comment had been closed, and he asked counsel if this would be allowable. Counsel replied that the Commission could decide to reopen public testimony. Chairperson Planthold called a recess at 11:30 PM to allow people in attendance to move their cars.

The meeting was reconvened at 11:48 PM.

Chairperson Planthold stated that he had spoken with Counsel during the pause and had concluded that because public comment was closed, the Commission could not ask Mr. Lynn to speak. Chairperson Planthold said he did not see a substantial basis

to say that staff did not abuse its discretion. Thus, he said he would vote against the motion.

Commissioner McCoy offered a friendly amendment to the motion, so that the motion would read: staff had the authority to make the determination about lifting the limits in accordance with applicable local law and staff did not abuse its discretion in making that decision. Commissioner Anglade moved to bifurcate the motion further.

Motion 03-10-14-11 (Anglade/McCoy): moved, seconded, and approved (4-1, Melbostad dissenting): that the Commission bifurcate the motion as follows: (1) Staff had the authority to act within local applicable law; and (2) Staff did not abuse its discretion in acting within applicable local law.

Motion 03-10-14-12 (Anglade/McCoy): moved, seconded, and approved (4-1, Melbostad dissenting): that staff had the authority to act within local applicable law.

Motion 03-10-14-13 (Anglade/McCoy): moved, seconded, and approved (3-2, Planthold and Melbostad dissenting): that staff did not abuse its discretion in acting within applicable local law.

The Commission then considered whether the expenditure ceilings should be re-imposed. Vice-Chair Garcia said that the limits should be re-imposed but that the Commission was hindered by practicality issues. He suggested that the limits be re-imposed if Ms. Harris makes it into the runoff. Commissioners Anglade and McCoy expressed doubt about the authority of the Ethics Commission to re-impose the ceilings once the ceilings have been lifted. Counsel opined that the ceilings could be re-imposed if the motion is viewed as saying that staff acted in error in lifting the ceilings, that the Commission wants to re-impose what the law requires, and that the timeline for this re-imposition is the runoff.

Commissioner Melbostad stated that while this is creative solution, it is different enough from the agenda item to warrant public comment. Counsel advised that it is the choice of the Commission whether to entertain further public comment. Commissioner Melbostad asked that the record reflect that he was not allowed by Chairperson Planthold to ask Mr. Lynn questions prior to voting on Vice-Chair Garcia's motion. Vice-Chair Garcia offered a motion to vote on whether to vote to reopen public comment.

Motion 03-10-14-14 (Garcia/Melbostad): moved, seconded, and failed (1-4, Melbostad supporting): to vote to reopen public comment.

Motion 03-10-14-15 (Garcia/Planthold): moved, seconded, and approved (3-2, Anglade and McCoy dissenting): that if there is a runoff in the District Attorney's race, the limits for the runoff would be re-imposed.

- Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Pilpel warned that the Commission's decisions may have unintended consequences. He objected to not taking public comment prior to the last decision.

Ms. Linnenbach stated that the Commission had abused its discretion and created a situation in which the limits would be easily lifted again.

Mr. Allen said that the public is better educated about these issues and possible remedies than the commissioners, who, by their actions, had proven the Ethics Commission irrelevant.

Mr. Rosenfeld noted that if public comment had been allowed, other creative solutions could have been offered. He said he would have proposed to re-impose the limit, to take out of account the period of September 25 through October 14, and to state that from this point forward there will be penalties.

Ms. Cauble stated that the Commission's action does not preclude the normal operation of the ordinance. For example, if Fazio, another candidate in the District Attorney's race who has declined to accept the ceiling, were to break the ceiling, the ceiling would be lifted. She said the Commission had simply chosen to delay re-imposition of the expenditure ceilings until November 5, 2003.

Mr. Salomon noted that Commissioners at the end of the dais (referring to Commissioners Anglade and McCoy) argue when it serves their interest and claim ambiguity otherwise. He highlighted the disrespect he felt directed toward the public by pointing out that Commissioner Anglade was making funny faces during his speaking time. He also asked who was counsel for the Commission when the limits were lifted, and if it was the City Attorney's office, might there have been a conflict of interest.

Commissioner Melbostad asked that an item be included on a future agenda

concerning whether or not Kamala Harris is in violation of the Stipulation. He said that she is using a doorhanger with microscopic print. He said that if she is not conforming with the Stipulation, the Commission is not bound by it.

Mr. Jones stated that it looks bad when the Commission denies a commissioner's request to receive input from a staff member.

Commissioner Anglade responded to public comment by explaining that the decisions are not politically motivated and that she does not speak to anyone about her vote. She iterated that the Commission had resolved the matter in a way that is fair to the voters and not favoring any individual candidate.

The Commission agreed to recess until 1:00 p.m. Saturday, October 18, to resume the closed session.

The meeting was adjourned at 12:38 a.m.

Respectfully submitted,

Kevin De Liban

Campaign Finance Assistant

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ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

ROBERT R. PLANTHOLD
CHAIRPERSON

MICHAEL L. GARCIA
VICE-CHAIRPERSON

MICHELE ANGLADE
COMMISSIONER

WAUKEEN Q. MCCOY
COMMISSIONER

PAUL H. MELBOSTAD
COMMISSIONER

VIRGINIA E. VIDA
EXECUTIVE DIRECTOR

Agenda

NOTICE

Cancelled

The October 14, 2003 meeting of the Ethics Commission was recessed until Saturday, October 18 at 1 p.m. in City Hall.

The recessed meeting has been continued until the Commission's next regularly scheduled meeting on

Monday, November 10, 2003 at 5:30 p.m. in Room 408 City Hall.

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR NOVEMBER 10, 2003 MEETING
and
CONTINUATION OF SPECIAL MEETING OF OCTOBER 14, 2003
and AGENDA

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Monday, November 10, 2003, 5:30 P.M.

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Item continued from October 14, 2003 meeting: Possible closed session held pursuant to Government Code section 54956.9 and San Francisco Administrative Code section 67.10(d). (It is the Chair's intent not to convene this closed session.)**

Conference with Legal Counsel: Pending litigation
(Subdivision (a) of section 54956.9)

Terence Hallinan, et al. v. SF Ethics Commission, et al., Case No. CPF-03-503662 (SF Super. Ct.)

IV. **Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.**

Motion: Pursuant to San Francisco Administrative Code section 67.12(a), the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: pending litigation.

V. **Approval of the minutes of the Ethics Commission meeting of October 14, 2003; and special meeting of October 3, 2003. (Discussion and possible action.)**

VI. **Executive Director's report**
1. **Budget update**
2. **Limited public financing program**
3. **Legislative developments**
4. **Advice and opinions**

*The October 14, 2003 Special Meeting was continued to October 18, 2003 and then to the regular meeting date of November 10, 2003.

5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach
14. Governmental ethics conference: December 2004

VII. Consideration of what type of commemoration/celebration the Ethics Commission should have to mark its tenth anniversary and its accomplishments, and to review its early expectations and future directions(s); and when such a commemoration/celebration should be scheduled. [The voters approved a Charter amendment in November 1993 creating the Ethics Commission.] (Discussion and possible action.)

VIII. Consideration of how to fund litigation costs incurred through retention of outside counsel in Terence Hallinan, et al. v. SF Ethics Commission, et al., Case No. CPF-03-503662 (SF Super. Ct. and Calif. Ct. of Appeal) (Discussion and possible action.)

IX. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings.

X. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

XI. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: pending litigation.

XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XIII. Adjournment.

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The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact Donna Hall, Sunshine Ordinance Task Force, City Hall, Room 409, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724; Fax: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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Ethics Commission >> Meeting Information

Ethics Commission

November 10, 2003

Approved 12/8/2003

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

November 10, 2003

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I. Call to order and roll call.

Chairperson Robert Planthold called the meeting to order at 5:37 p.m.

COMMISSION MEMBERS PRESENT: Robert Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Michele Anglade, Commissioner; Paul Melbostad, Commissioner; Waukeen McCoy, Commissioner.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Joe Lynn; Oliver Luby; David Pilpel; Marc Salomon; Steve Levin; Charlie Marsteller.

MATERIALS DISTRIBUTED:

Agenda for Meeting of November 10, 2003

Executive Director's Report for the Meeting of November 10, 2003

Draft Minutes of the Regular Meeting of October 14, 2003

October 30, 2003 Memorandum from Ginny Vida regarding revised minutes of October 3, 2003 special meeting and Revised Draft Minutes of October 3, 2003 Special Meeting

Minutes of the Regular Meeting of September 8, 2003

November 6, 2003 Memorandum from Ginny Vida re: Agenda Item VIII: Funding litigation costs re outside counsel

Chart regarding Revenues Received as of October 29, 2003

Department of Elections Results of Consolidated Municipal Election of November 4, 2003

October 27, 2003 San Francisco Chronicle: The Chronicle Recommends

October 23, 2003 Daily Journal article: DA Sues Over Spending Cap

October 22, 2003 Bay Guardian: News & Culture

II. Public comment on matter appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Charlie Marsteller stated that he had formerly served as chair of the steering committee for the Yes on N Committee, which promoted the enabling legislation of the Campaign Finance Reform Ordinance in 1995. He said the current election had seen extraordinary events in the application of what he thought was a fairly simple concept involving the voluntary expenditure limits. He urged a public hearing and a deliberative process by the Ethics Commission to review the basic tenets of the CFRO and determine how the voluntary spending and candidate contributions limits work in reality. He referred the Commission to a book by Matthew Miller, The Two Percent Solution, which contains a section on campaign finance. He also provided a copy of an October 30, 2003 San Francisco Bay Times article entitled, "Newsom Fails to Disclose Spending Cap Bust," which he said provided a very interesting discussion of the issue of the voluntary expenditure limits.

David Pilpel stated that the Commission should review the lifting of the spending limits in the past several election cycles. He suggested that a workshop format would be more helpful than a regular meeting because it would allow for back-and-forth dialogue. He questioned whether the Commission could continue a meeting beyond five days, referring to the Commission's agenda notice that today's meeting was also a continuation of the special meeting of October 14, 2003. He further expressed concern that the Commission did not appear to maintain the 3-day and 30-day files

required by the Sunshine Ordinance.

Marc Salomon presented several questions that he wished to ask the Executive Director under Item IX. His remarks are summarized under Item IX.

III. Item continued from October 14, 2003 meeting: Possible closed session held pursuant to Government Code section 54956.9 and San Francisco Administrative Code section 67.10(d). (It is the Chair's intent not to convene this closed session.)

Conference with Legal Counsel: Pending litigation

(Subdivision (a) of section 54956.9)

Terence Hallinan, et al. v. SF Ethics Commission, et al., Case No. CPF-03-503662 (SF Super. Ct.)

Chairperson Planthold recited what had transpired since the Commission last met in closed session on October 14 regarding this matter. The closed session was recessed to October 18, but that meeting was cancelled. On October 17, Judge Quidachay denied the writ of mandamus. On October 21, petitioners filed an emergency petition for writ of review with the Court of Appeal, which was denied on October 22. Petitioners have since filed a motion for reconsideration of the court's order denying the petition, which is pending.

Commissioner Paul Melbostad informed the Commission that he and Commissioner Waukeen McCoy had attended the extensive hearing before Judge Quidachay. He said that Petitioner Hallinan's attorney had confirmed that if Bill Fazio, another candidate in the District Attorney's race who had not accepted the spending limit, were to file a notice that he had exceeded the spending limit, the question before the court would be rendered moot. He added that Fazio has filed a report that he had exceeded the spending limit, so, in Commissioner Melbostad's opinion, the issue of whether the spending limit has been lifted has been rendered moot.

Mr. Pilpel testified that it was unfortunate that the Commission's creative solution [lifting the spending limits in the run-off election] could not be implemented. He said that it was ironic that the candidate who caused the spending limit to be lifted in the run-off election is not a candidate in the run-off election.

Chairperson Planthold announced that there would be no closed session, but that it would not foreclose a future closed session as the matter wends its way through the courts.

IV. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Because there was no closed session on Item III, Item IV was rendered moot.

V. Approval of the minutes of the Ethics Commission meeting of October 14, 2003; and special meeting of October 3, 2003. (Discussion and possible action.)

Commissioner Melbostad said that now that the Commission has the historical experience, it may wish to revisit whether the general election and run-off election are separate elections for the purposes of the lifting of the voluntary spending limits.

Commissioner Melbostad pointed to two corrections in the draft October 14 minutes. First, referring to page 12, he said that he had asked for a report on whether Kamala Harris was in compliance with the stipulation, not whether she was in violation of the stipulation. Second, he said that he had also asked that the matter be scheduled as an item at the next meeting (meaning today's meeting), not at a future meeting.

Commissioner Michele Anglade suggested that staff listen to the tape to determine what was said at the last meeting.

David Pilpel testified that under section 67.18 of the Sunshine Ordinance, draft minutes must be available within 10 days. He added that regarding the contents, it is important to record as much content as possible for the historical record.

Commissioner McCoy asked that staff review a paragraph on page 9. He said that he recalled asking District Attorney Hallinan if staff had the authority to lift the spending cap, and Hallinan's response was yes. He asked that this be reflected in the minutes.

Mr. Marsteller commended the taker of the minutes of the meeting, noting the difficulty of issues that were raised. Vice-Chairperson Garcia seconded the commendation.

Motion 03-11-10-1 (Garcia/Anglade): Moved, seconded, and unanimously passed (5-0): to approve the draft minutes of the October 14, 2003 meeting, except for the paragraph on page 9 referenced by Commissioner McCoy and the paragraph on page 12 referenced by Commissioner Melbostad, both of which staff will bring back to the Commission for consideration and approval.

Regarding the revised draft minutes of the October 3 meeting, Commissioner Anglade

said she believed that the 4-1 vote reported on page 5 after motion 03-10-03-5 was not on the issue of entering into the stipulated order. She believed that the vote on the stipulated order was unanimous. Commissioner Melbostad said that it was incorrectly stated at the hearing before Judge Quidachay that the vote on the stipulation had been unanimous; he added that he had informed the Commission's Counsel of the error. The Commission directed staff to listen to the tape to ensure the accuracy of the vote.

Motion 03-11-10-2 (McCoy/Garcia): Moved, seconded, and passed (4-1, Melbostad dissenting): to reconsider approval of the draft October 3, 2003 minutes.

Motion 03-11-10-3 (Garcia/McCoy): Moved, seconded, and unanimously passed (5-0): to approve the revised draft minutes of the October 3, 2003 minutes, except for the paragraph that comes after motion 03-10-03-5 on page 5, which staff will bring back to the Commission for consideration and approval.

Commissioner Anglade made a point of personal privilege and asked that the Commission not take public comment on similar matters to resolve whether it was a 4-1 vote or unanimous vote since the Commission does not have before it the accuracy of the facts for comment. Commissioner McCoy concurred. Commissioner Melbostad stated that he knew the accuracy of the vote because that's how he voted. He added that he explained to the Commission the reason for his vote.

VI. Executive Director's report

- Budget update
- Limited public financing program
- Legislative developments
- Advice and opinions
- Investigation and enforcement program
- Campaign finance disclosure program
- Electronic filing program
- Campaign finance audit program
- Lobbyist program
- Campaign consultant program
- Statements of Economic Interests
- Sunshine Ordinance Declarations
- Education and outreach
- Governmental ethics conference: December 2004

Executive Director Ginny Vida referred the Commission to her written report. She said that while staff had grown from 4 in 1995 to 10 in the current year, the Commission has had greatly expanded mandates and the Commission is very much understaffed to meet those mandates. She said that the Commission has urgent needs, that members of the public have expressed frustration because mandates are not being fully met, and that the Commission must make a vigorous appeal to the Mayor and the Board of Supervisors for items to be added to the Commission's budget.

Chairperson Planthold asked why there is a reported need for money for a robust server when the Commission expended funds earlier in the year for a new SQL server. Ms. Vida said that the new server was needed to make the network of computers at the Commission office function more efficiently. Campaign Finance Officer Joe Lynn clarified that the new SQL" server" upgrade was a misnomer - it actually was a software package that the Commission bought and had nothing to do with an actual server.

Chairperson Planthold asked if the Commission could contract with the Controller's Office to perform audits. Ms. Vida replied that the Commission had considered this in the past and decided to do its work in-house because political auditing is very specialized and the Public Finance Administrator would have to supervise the work anyway. She added that the Commission has no money for a work order with the Controller.

In response to Commissioner McCoy's question about whether all new complaints are logged in, Ms. Vida said that a complaint must allege a violation within the Commission's jurisdiction.

Mr. Pilpel suggested that the Commission consider the budget as a separate item at the next meeting in order to begin consideration of its priorities. He requested that more detail be provided in the ED report with respect to, for instance, legislative developments, overdue reports, and the names of committees with fines.

Vice-Chairperson Michael Garcia asked if it would be possible to provide a flow chart showing the month to month changes in amounts of fines assessed, waived, reversed and paid.

Mr. Marsteller recounted that when he requested from the Commission a list of committees that had not filed, he received it. He suggested that a posting on the web might be appropriate for committees that failed to file reports after a certain amount of time had elapsed.

Commissioner Melbostad reported that he had requested that Ms. Vida provide him information about compliance with the settlement by the Harris campaign. He said he received copies of a letter from Jim Sutton that included a payment schedule, and invoices for and photocopies of advertisements. Commissioner Anglade questioned whether Commissioner Melbostad's comments were relevant to the ED report. Commissioner Melbostad replied that the information was relevant to a discussion of revenues.

Commissioner Melbostad asked if there was an effort by staff to review reports by independent expenditure committees to determine who is supporting or opposing candidates. He said that there have been a variety of ads and mailings by expenditure committees in this election that mention candidates and that the purpose of the mailings appears to be advocating the election of candidates. Ms. Vida said she would discuss this question with staff.

VII. Consideration of what type of commemoration/celebration the Ethics Commission should have to mark its tenth anniversary and its accomplishments, and to review its early expectations and future directions(s); and when such a commemoration/celebration should be scheduled. [The voters approved a Charter amendment in November 1993 creating the Ethics Commission.] (Discussion and possible action.)

Chairperson Planthold suggested that the Commission consider a commemoration of the Commission's 10th anniversary, perhaps as a special item on the January agenda. He said that the Commission could invite former commissioners and staff to seek input about whether they felt the Commission's mission has been fulfilled as well as elicit suggestions for the future direction of the Commission.

Vice-Chairperson Garcia suggested that January might be ambitious, especially since the Commission has not formulated the forum for the commemoration. He suggested a seminar and said that he would give thought to working up a questionnaire for this topic. He added that inasmuch as the Commission is in a period of introspection now, it might be a good idea to solicit outside input on some of the issues that have been contentious.

Commissioner Anglade said that it would be beneficial to have public input and that the event might address the issue of where the Commission is going.

Ms. Vida suggested that staff could develop a list of notable accomplishments over the past 10 years and added that a focus on the future is important as well.

Commissioner McCoy added that the Commission should solicit input from the appointing authorities.

Commissioner Melbostad reported that when he recently moved his offices, he had files related to the Ethics Commission that stretched eight feet. A review of those files made him recognize that there has been much accomplishment and progress,

despite his frustrations on occasion. He suggested that the Commission conduct outreach to the initial sponsors of the legislation creating the Ethics Commission, former Supervisors Shelley and Achtenberg.

Mr. Pilpel suggested that Randy Riddle, the Deputy City Attorney who worked with the Commission, be invited, as well as past successful and unsuccessful candidates for office. He said that the Commission should be concerned with three basic questions: What has the Commission done well over time? What has the Commission done poorly over time? What should change so the Commission can better fulfill its mandates? He suggested that the event be an assessment, not a celebration, and that it occur during an afternoon meeting.

Chairperson Planthold added that good government groups should be included. He suggested that the Commission proceed with this item on the December agenda and asked that staff provide a list of accomplishments. He asked members of the audience to solicit comments from everyone.

VIII. Consideration of how to fund litigation costs incurred through retention of outside counsel in Terence Hallinan, et al. v. SF Ethics Commission, et al., Case No. CPF-03-503662 (SF Super. Ct. and Calif. Ct. of Appeal) (Discussion and possible action.)

Chairperson Planthold referred the Commission to the November 6 staff memorandum on this issue. He said that the Santa Clara County Counsel bills on a quarterly basis and that the Commission will receive its bill for litigation services in January 2004. He suggested that the Commission explore the possibility of funding the litigation costs from the Commission's $10,000 enforcement fund rather than from salary savings that were identified at the last meeting.

Ms. Vida reported that the Commission has been notified that the 5 percent contingency budget cut will be required in the current budget and that departments may have to further reduce their budgets by 8% to 14% in the next fiscal year. She also reported that the staff has been in discussions with the Controller's Office about a salaries shortfall in the Ethics budget for the current year. She suggested that the Commission defer action on funding for litigation services until it knows where it stands on the budget issues.

In response to Commissioner Melbostad's question whether the City Attorney's Office funds costs for outside counsel for departments where the City Attorney is conflicted out, Deputy City Attorney Claire Sylvia said that the Charter provides that the departments pay the costs of outside counsel in such a situation.

Vice-Chairperson Garcia asked if settlement amounts could go into the enforcement fund so that the fund remains healthy. Ms. Vida explained that settlement amounts must go into the General Fund and added that if the Commission does not use the amounts in its enforcement fund, the unused amounts will be returned to the City. She added that some of the money in the fund may need to be given up because of the salary deficit.

Commissioner McCoy asked if the Commission could consider finding attorneys who would take cases on a pro bono basis. Ms. Vida said that she believes the Commission must first go to other public agencies for assistance, which may provide services for free. When the matter involves going to court, however, even public agencies may charge.

Mr. Pilpel suggested that the Commission explore carrying forward its enforcement fund and the possibility of a supplemental appropriation.

IX. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings.

After a recess from 7:20 to 7:29 p.m., Chairperson Planthold announced that Item IX was new and exploratory, and that it was an opportunity for Commission members to ask questions but not engage in debate. He added that the staff and chair will work on responses.

Earlier in the evening, Marc Salomon spoke regarding Item IX. Among other questions, he asked what public outreach to the regulated community the Commission makes before proposing amendments to the laws that it administers; what strategies will be recommended to address the problem of the Commission being under-funded and understaffed; what standards there are by which the public can assess the competence of the Commission's work if investigations are confidential; what role the public should have in setting the Commission's agenda; and what cost projections the Commission will make regarding the number of public finance participants. Mr. Salomon agreed to provide a copy of his comments/questions to the Commission.

Vice-Chairperson Garcia suggested that the Commission revisit campaign spending limits, look at procedures to implement greater communication between staff and the Commission when filings are not received, consider recusal and ex parte communications, and obtain information about the appropriate relationship between a commissioner and his or her appointing authority.

Commissioner McCoy asked that the Commission consider provisions related to prohibiting the Ethics Commission or any commissioner from making improper statements to the media about a fellow sitting commissioner and whether censure is appropriate. He added that he would like these items addressed for the next meeting.

Commissioner Anglade asked that it be clarified who the complainant is, if the source has not opted for anonymity and if the source is a commissioner. She also asked for memoranda on the censure process and how items get placed on the agenda. Commissioner McCoy suggested that these be available before the next meeting.

Commissioner Melbostad said that now that the Commission has the historical experience, it should examine whether raising the spending limits would result in greater compliance. He said the Commission should also re-examine what the triggering events to lift the spending limits should be.

Ms. Vida said it would be good for the Commission to clarify when limits should be lifted and whether in certain circumstances the Commissioners should make the decision.

Mr. Marsteller, stating that the budget will be a big issue during the next 2-3 years, suggested that the Commission take up the budget soon and consider it for a period of time.

Mr. Pilpel informed the Commission that it might be useful to look at the Commission's Code of Ethics and regulations regarding anonymous complaints. He suggested that item IX be a regular practice of the Commission.

Vice-Chairperson Garcia asked if a determination can be made regarding what topics will be taken up at the next meeting earlier, rather than receiving the information just a few days before the meeting. That way, the members will have more time to work up ideas.

X. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

Chairperson Planthold announced that there would not be a closed session.

XI. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

There was no closed session.

XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Pilpel referred the Commission to S.F. Charter section 4.102, which mandates a commission secretary for commissions. He also said that section 67.16 of the Sunshine Ordinance provides that the minutes should report the roll-call vote on items considered at the meeting and that requesting a roll-call vote might address the problem of disputes over votes. He asked for a copy of the letter regarding the Harris campaign's compliance. Finally, he said that the confidentiality of complaints does little to help the public understand the complaint process but provides greater protection to respondents than a police investigation.

XIII. Adjournment.

Motion 03-11-10-4 (McCoy/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission adjourn its meeting.

The meeting was adjourned at 7:50 p.m.

Respectfully submitted,

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Mabel Ng

Deputy Executive Director

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
DECEMBER 8, 2003, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

12-03-03P01:15 RCVD

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Approval of the minutes of the Ethics Commission meetings of November 10, 2003, October 14, 2003; and special meeting of October 3, 2003. (Discussion and possible action.)**

IV. **Proposed regulations for implementation of the recent amendments to the Campaign Finance Reform Ordinance. Proposed regulations will clarify ambiguities related to, but not limited to, the public financing program, expenditure and contribution limits, filing requirements, and use of campaign funds. A staff report will be available on December 4, 2003, from the Commission office and on its web site. (Discussion and possible action.)**

V. **Executive Director's report**
1. **Budget update**
2. **Limited public financing program**
3. **Legislative developments**
4. **Advice and opinions**
5. **Investigation and enforcement program**
6. **Campaign finance disclosure program**
7. **Electronic filing program**
8. **Campaign finance audit program**
9. **Lobbyist program**
10. **Campaign consultant program**
11. **Statements of Economic Interests**
12. **Sunshine Ordinance Declarations**
13. **Education and outreach**

VI. **Consideration of what type of commemoration/celebration the Ethics Commission should have to mark its tenth anniversary and its accomplishments, and to review its early accomplishments and future direction(s); and when such a commemoration/celebration should be scheduled. [The voters approved a Charter amendment in November 1993 creating the Ethics Commission.] (Discussion and possible action.)**

VII. Consideration of how to fund litigation costs incurred through retention of outside counsel in Terence Hallinan, et al. v. SF Ethics Commission, et al., Case No. CPF-03-503662 (SF Super. Ct. and Calif. Ct. of Appeal) (Discussion and possible action.)

VIII. Review and approval of draft Annual Report for FY 2002-2003. The draft Annual Report will be available on December 4, 2003, from the Commission office and on its web site. (Discussion and possible action)

IX. Proposed plan for implementation of Proposition E. On November 4, 2003, the voters approved an amendment to the Charter to strengthen and clarify the City's conflict of interest laws. A staff memo will be available from the Commission office and on its web site on December 4, 2003. (Discussion and possible action.)

X. Consideration of possible amendments to Article XI of the Commission's By-laws to prohibit the Ethics Commission or any member of the Commission from making statements to the media about a fellow sitting commissioner, and to provide for enforcement of such a prohibition. (Discussion and possible action.)

XI. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings.

XII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

XIII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: pending litigation.

XIV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XV. Adjournment.

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The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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Ethics Commission >> Meeting Information

Ethics Commission

December 08, 2003

(Approved 1/12/04)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

December 8, 2003

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I. Call to order and roll call.

Chairperson Robert Planthold called the meeting to order at 5:37 p.m. He announced that Commissioner Paul Melbostad had resigned earlier in the afternoon. Joe Lynn was appointed by District Attorney Terence Hallinan to replace Commissioner Paul Melbostad to serve for the remainder of the term.

COMMISSION MEMBERS PRESENT: Robert Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Michele Anglade, Commissioner; Joe Lynn, Commissioner; Waukeen McCoy, Commissioner.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Public Finance Administrator; Grace Chau, Public Finance Auditor.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Paul Melbostad; David Pilpel; Charlie Marsteller; Janis Crum.

MATERIALS DISTRIBUTED:

Agenda for Meeting of December 8, 2003

Draft Minutes of the Regular Meeting of November 10, 2003

Draft Minutes of the Regular Meeting of October 14, 2003

Revised Draft Minutes of the Special Meeting of October 3, 2003

December 4, 2003 Memorandum from Ginny Vida regarding Proposed Regulations Related to Public Financing Provision of CFRO

Timeline for Public Financing in the November 2, 2004 Election

Executive Director's Report for the Meeting of December 8, 2003

Chart regarding Revenues Received as of December 3, 2003

November 25, 2003 Letter from Ginny Vida to Angela Alioto for Mayor 2003

December 3, 2003 Memorandum from Ginny Vida re: Agenda Item VI: 10th anniversary of Ethics Commission

San Francisco Ethics Commission Annual Report for FY 2002-2003

December 3, 2003 Memorandum from Ginny Vida regarding Implementation of Proposition E: Ethics Reform

II. Public comment on matter appearing or not appearing on the agenda that are within the jurisdictions of the Ethics Commission.

Paul Melbostad stated that even though he resigned from the Commission, he will continue to have an interest in the Commission's work. Commissioner Joe Lynn expressed his thanks to Mr. Melbostad for his dedication and hard work during his term. Chairperson Planthold also thanked Mr. Melbostad for his service to the Commission.

III. Approval of the minutes of the Ethics Commission meetings of November 10, 2003, October 14, 2003; and special meeting of October 3, 2003. (Discussion and possible action.)

- *November 10, 2003 minutes*

Commissioner Michele Anglade suggested that the last sentence in the second paragraph under Item III on page 2 be changed to read: "He added that Fazio has filed

a report that he had exceeded the spending limit, so in Commissioner Melbostad's opinion, the issue of whether the spending limit has been lifted has been rendered moot," to clarify that it was Commissioner Melbostad who made the statement.

Motion 03-12-08-1 (Anglade/McCoy): Moved, seconded, and unanimously passed

(5-0): to change the last sentence in the second paragraph under Item II to read as proposed by Commissioner Anglade.

Vice-chairperson Garcia stated that he looked forward to getting reports regarding spending made by committees that purportedly made independent expenditures to support or oppose candidates, as discussed in the last paragraph of Item VI on page 5 of the draft minutes.

Charlie Marsteller pointed out that his statement on page 8 of the draft minutes should read: "Mr. Marsteller, stating that the budget will be a big issue during the next 2-3 years..." replacing the phrase "in the next 2-3 years".

Motion 03-12-08-2 (Garcia/Anglade): Moved, seconded, and unanimously passed

(5-0): to accept the amendment as referenced by Mr. Marsteller.

Motion 03-12-08-3 (Anglade/Garcia): Moved, seconded, and unanimously passed

(5-0): to approve the draft minutes of the November 10, 2003 meeting.

- *October 14, 2003 minutes*

Motion 03-12-08-4 (Garcia/McCoy): Moved, seconded, and unanimously passed

(5-0): to reconsider the approved October 14, 2003 draft minutes to reflect greater accuracy.

Motion 03-12-08-5 (Garcia/Anglade): Moved, seconded, and unanimously passed

(5-0): to accept the language recommended on page 2 of staff's December 3, 2003 memo to insert the following sentence in the second full paragraph, before the last sentence, on page 9 of the October 14 draft minutes: "Commissioner McCoy asked Mr.

Hallinan whether staff has the authority to lift the cap if, hypothetically, staff determined that there was a rejection of the spending limits. Mr. Hallinan replied that if a candidate rejected the cap and then went over 100 percent of the limits, those conditions would lift the cap."

Motion 03-12-08-6 (Anglade/Garcia): Moved, seconded, and unanimously passed (5-0): to accept the change recommended in staff's memo, so that page 12, paragraph 5, of the October 14 draft minutes, reads as follows: "Commissioner Melbostad asked that an item be included on a future agenda concerning whether or not Kamala Harris is in violation of the stipulation."

Chairperson Planthold stated that there was no need for the Commission to vote on approval of the draft minutes as a whole because the Commission had already done that.

- *October 3, 2003 minutes*

Vice-chairperson Michael Garcia moved, and Chairperson Planthold seconded the motion, to accept the revised draft minutes, which stated that the vote to accept the Kamala Harris stipulated order was 4 to 1. Commissioner Anglade asked whether the Commission's closed session deliberation should be made public, inasmuch as much information has already been disclosed.

David Pilpel stated that a vote by the Ethics Commission on any matter is public, but that specific deliberations are another matter. He suggested that the Commission take roll call votes.

Commissioner Lynn stated that he was not familiar with the issue because he had just been appointed, but he would vote "No" if the Commission voted today.

Motion 03-12-08-7 (Garcia/Planthold): Moved, seconded, but failed to pass (2-3, Commissoners Anglade, McCoy, and Lynn opposing): to accept the revised draft minutes of October 3, 2003 meeting as it relates to the vote on the stipulated order on page 5.

Chairperson Planthold announced that this matter may be reconsidered at a future meeting.

IV. Proposed regulations for implementation of the recent amendments to the Campaign Finance Reform Ordinance. Proposed regulations will clarify ambiguities related to, but not limited to, the public financing program, expenditure and contribution limits, filing requirements, and use of campaign funds.

Public Finance Administrator Shaista Shaikh referred the Commission to the staff memo dated December 4, 2003 regarding proposed regulations related to public financing provisions of the CFRO. She stated that the regulations are intended to clarify and implement changes recently made to the CFRO.

In response to Chairperson Planthold's question about the timeline for approving the regulations, Deputy Executive Director Mabel Ng said that in anticipation of an election for the members of Board of Supervisor in November 2004, staff believed that if the Commission would consider these regulations now, they could be sent to the Board of Supervisors for approval. If the Board approves the regulations, or if the Board takes no action within 60 days, the regulations will become effective in time for staff to incorporate them in the candidate's guides and workshops. Ms. Shaikh informed the Commission that 15 candidates have filed a Statement of Intention to run, for the Board; of these, 11 have expressed interest in applying for public financing. Therefore, she plans to conduct a workshop in January 2004. She estimated there will be more candidates, between 15 to 25, participating in the program in the November 2004 election.

Commissioner Lynn complimented Ms. Shaikh's successful handling of the public financing program. He stated that San Francisco is the first jurisdiction to buck the trend of increased expenditures through the public financing program.

In response to Chairperson Planthold's question about Regulation 1.142(b), which requires eligible candidates to comply fully with the requirements imposed by CFRO Section 1.140(a) regardless of whether they accept public funds, Ms. Shaikh explained that such candidates will still have to fulfill obligations such as accepting the voluntary expenditure ceiling.

Chairperson Planthold proposed that some technical changes be made on page 2: in the definition of matching contributions, "other than the candidate" should be set off by a comma; in the definition of qualifying contributions, "other than a loan" should be set off by a comma.

David Pilpel and Charlie Marsteller suggested that more outreach be done to obtain input on the proposed regulations, which they said are complicated.

Commissioner Anglade stated that it is important to solicit public input but she expressed concern that public involvement may create confusion in the rulemaking process. Commissioner Garcia suggested that the Commission solicit feedback from the public. Commissioner Lynn stated that good outreach was more than just legal notices and formal mailings; it should explain the importance of the issue and the interest to the community of the proposals. He emphasized that the public in San Francisco supports the Commission and that the public and the elected officials are the Commission's strength. Ms. Shaikh pointed out that the some proposed changes to the regulations came from feedback by participating candidates.

Motion 03-12-08-8 (Garcia/Anglade): Moved, seconded, and unanimously passed

(5-0): to continue the discussion of this item to the next meeting.

V. Executive Director's report

- Budget update
- Limited public financing program
- Legislative developments
- Advice and opinions
- Investigation and enforcement program
- Campaign finance disclosure program
- Electronic filing program
- Campaign finance audit program
- Lobbyist program
- Campaign consultant program
- Statements of Economic Interests
- Sunshine Ordinance Declarations
- Education and outreach
- Governmental ethics conference: December 2004

Executive Director Ginny Vida reported that she will start to prepare the Commission's FY04-05 budget and will provide more details after she meets with the Mayor's Budget Analyst this week.

Chairperson Planthold announced that he will be interviewed by Bruce Petit on the City's cable TV government channel at 5:00 pm on Friday, December 19. The subject of the interview is the work of the Ethics Commission.

In response to Commissioner Lynn's questions, Ms. Vida said that the current budget, assuming continued vacancies, includes a deficit of about $13,000. She stated that the Controller's Office projected a deficit of $50,000, which was due to the Campaign Finance Officer's salary having been mistakenly charged to the temporary salary

account. Commissioner Lynn expressed concern that the budget will not be adequate to meet the mandate of implementing Prop E and other recently passed laws, and suggested that the Commission request supplemental funding. Ms. Vida stated that the department was subject to significant cuts last year and currently has three vacant positions. She stated that the attrition savings and step M adjustments have had a severe impact on the budget, and the Commission may not be able to achieve revenue targets. She further stated that other than this year, the department has never exceeded its salaries problem, but that fortunately, the department did not have any layoffs, as was the case with other departments. Commissioner Lynn stated that the Executive Director did not request budget addbacks from the Budget Committee as some other departments did. Ms. Vida explained that that was because the Board of Supervisors agenda did not reflect anything about the addbacks and she had not been advised of the addback timetable.

In response to Commissioner Anglade's question about the increase in complaints, Ms. Vida said that there is typically an increase in complaints during an election season. She said the Commission needs one or two additional assistant investigators.

In response to Vice-Chairperson Garcia's question regarding the language in the second paragraph of the advice letter to the Alioto Campaign, Ms. Ng clarified that once a candidate has raised sufficient funds to pay for expenses accrued in the general election, under the Commission's regulations, all contributions accepted by the candidate are subject to the $250 run-off contribution limit. Commissioner Lynn disagreed with this policy. He said that the law states that after the date of the general election, contributions are limited to $250. The regulation allows $500 for candidates who can run big campaigns that can attract credit from vendors. A big campaign can take advantage of this loophole by having accrued a large amount of expenses. He also stated that a loan is a contribution, not an expenditure. Allowing candidates to collect at the $500 contribution limit after the general election to retire the accrued expenses, including loans, is not fair to non-wealthy candidates. Ms. Ng noted that the letter did not make any conclusion that a loan was or was not a contributions but identified the issue as one that the Commission may review in the coming months.

David Pilpel asked the Commission to provide Controller's reports on the Commission's revenues, expenditures and available funds at the next meeting. Charlie Marsteller asked that a small forecast of the budget issued for the next three years be provided. Commissioner Lynn urged the Commission to prepare the budget in December so that the Commission will be in a better position to adopt a budget that is suitable. Chairperson Planthold stated that the Commission can approve the budget in February and still have enough time to meet the February 20 deadline for submitting the budget.

VI. Consideration of what type of commemoration/celebration the Ethics Commission should have to mark its tenth anniversary and its accomplishments, and to review its early expectations and future directions(s); and when such a commemoration/celebration should be scheduled. [The voters approved a Charter amendment in November 1993 creating the Ethics Commission.]

After a recess from 7:30 to 7:40 p.m., Chairperson Planthold called Item VI and referenced staff's list of Commission mandates and achievements. He stated that the Commission needs to decide when to have the 10th anniversary event and then start sending out invitations.

The Commissioners discussed conducting outreach to gather comments, feedback or responses from people such as former commissioners, appointing authorities, former staff, other Ethics Commissions and other interested parties. They also discussed the type of information that the Commission wants to solicit, which may include what the Commission did well and how to do it better; and where it has fallen short. Vice-Chairperson Garcia offered to be involved in writing the letter asking for responses. Chairperson Planthold suggested looking for outside support for this process. Commissioner Lynn suggested that Golden Gate University might sponsor a forum sometime in March. He offered to contact Golden Gate University. Commissioner Anglade suggested April in view of the March election.

Mr. Marsteller commented that various other commissions such as the L.A. Ethics Commission had made a similar study to try to see what the evolutionary pathway for such bodies is and the future of such commissions.

Mr. Pilpel repeated the three questions that he made at the last meeting which he thought would be helpful: What has the Commission done well over time? What has the Commission done poorly? What changes the Commission should make to fulfill its mandates better?

Ms. Vida suggested that founders of the Commission be invited to share their memories of the historical events, such as the placing of Prop K on the ballot.

Motion 03-12-08-9 (Garcia/McCoy): Moved, seconded, and unanimously passed (5-0): To authorize sending out the listed mandates and achievements and soliciting responses to help prepare for the 10th anniversary commemoration.

VII. Consideration of how to fund litigation costs incurred through retention of outside counsel in Terence Hallinan, et al. v. SF Ethics Commission, et al., Case No. CPF-03-503662 (SF Super. Ct. and Calif. Ct. of Appeal)

Chairperson Planthold noted that that the City Attorney's Office had recused itself from this case and subsequently the Santa Clara County Counsel's Office had been

retained to represent the Commission in the matter. He said the Commission had received an invoice for an amount under $5,000. The original thought was that salary savings could be the source of funding this; later it was learned that there is a $10,000 enforcement fund available, which if not used will go to the City's general fund on June 30. Chairperson Planthold suggested that the Commission support funding this cost from the enforcement fund. Commissioner Lynn added that the enforcement fund can be used to pay for any professional services that the Commission has incurred without any additional approval from the Mayor or Controller.

Mr. Pilpel stated that the stipulation with the Kamala Harris Committee provided for payments to the City and asked whether such payments can be used to replenish the enforcement fund. Ms. Vida clarified that payments go into City's General Fund, not into the Commission's budget.

Motion 03-12-08-10 (Garcia/Anglade): Moved, seconded, and unanimously passed (5-0): That the Commission pay from its enforcement fund for legal services provided by the Santa Clara County City Attorney's Office.

VIII. Review and approval of draft Annual Report for FY 2002-2003.

Commissioner Lynn stated that the Annual Report did not present a realistic picture of the Commission because major problems or concerns were not addressed in the report. Chairperson Planthold suggested that Commissioner Lynn could use his knowledge and experience to help reshape future reports.

In response to Commissioner Anglade's question about why the report addresses only eight years of accomplishment but the Commission is celebrating its 10th year in creation, Ms. Vida stated that the Commission was authorized 10 years ago, but it took a long time from initial approval by the voters to secure funding and hire the first staff. She said the first Annual Report covered FY 95-96.

Commissioner Lynn complimented staff on the report, which he stated was well written, well organized and comprehensive. He added that the Commission is one of the few commissions that take seriously the obligation to prepare an annual report.

Mr. Marsteller commented that there are two types of reports: one is the annual report which is traditionally required for all City departments; the other is discussion of the effectiveness of the laws required by the Charter. He suggested that the Commission add or issue the second report concurrently but not necessarily integrated

into the annual report.

Mr. Pilpel urged the Commission to summarize the complaints by type and disposition in the report so that there will be no veil of secrecy. He suggested that there should be some reference made to explain why the report does not include an assessment of whether the laws are adequate. He further suggested that citations be added to case names identified in the report.

Ms. Vida stated that the mandated annual report to the Mayor and Board of Supervisors addresses the effectiveness of the laws within the Commission's jurisdiction but a separate report has not been issued. She stated that the Commission, on an ongoing basis, evaluates the laws within its jurisdiction and makes recommendations to the Mayor and Board of Supervisors about changes that should be made. She noted that he Commission had just spent 11 meetings evaluating the effectiveness of the conflict of interest laws and had proposed extensive changes to the Board; and that the Board had placed a Charter amendment on the ballot which the voters had approved.

Motion 03-12-08-11 (Garcia/Anglade): Moved, seconded, and unanimously passed

(5-0): to approve this draft annual report for FY 2002-2003.

IX. Proposed plan for implementation of Proposition E. On November 4, 2003, the voters approved an amendment to the Charter to strengthen and clarify the City's conflict of interest laws.

Commissioner Lynn suggested that the Commission request additional funding to implement Prop E. He stated that the Commission should review its priorities to ensure that priority items occupy staff's time. Ms. Vida noted that Prop E is a Charter amendment approved by the voters and that it is important to implement it.

Janis Crum pointed out that staff's memo did not mention the gift rule changes. She stated that there are three different gift rules: one for lobbyists, one under Prop E, and one under the state law. She wants to highlight the difficulties that legal practitioners have in trying to counsel their clients about the difficult gift rules. Commissioner Lynn agreed that the complexity is a problem of the laws and stated that simplicity should be the goal.

Mr. Pilpel encouraged the Commission to prepare a summary budget for implementing Prop E and submit to the Board of Supervisor a supplemental request for any legally available funds.

X. Consideration of possible amendments to Article XI of the Commission's By-laws to prohibit the Ethics Commission or any member of the Commission from making statements to the media about a fellow sitting commissioner, and to provide for enforcement of such a prohibition.

Commissioner McCoy stated that a fine should be imposed if a defamatory or disparaging statement is made to the media by a commissioner about a fellow sitting commissioner. Commissioner Anglade added that when an inappropriate comment is made to the media, public trust and faith in the Commission is lost. She suggested that public figures should be subject to a high standard. Vice-Chairperson Garcia questioned who would determine whether the statement made was defamatory or disparaging. Commissioners discussed what sort of comments would be inappropriate and whether any enforcement can be taken.

Deputy City Attorney Claire Sylvia stated the Commission's by-laws do not specifically provide for punishment, but although rules along the lines proposed can be drafted, the enforcement of such rules could present First Amendment concerns. She said that violations of the by-laws might be considered official misconduct.

Mr. Melbostad stated that he had been falsely accused of making disparaging comments. He clarified that when he was asked by a reporter as to whether he was biased in the Harris case, he explained that the Commissioners were each appointed by five different appointing officials so that no one appointing official can dominate the Commission. He mentioned Commissioners Anglade and McCoy to explain that these commissioners would have reason to be biased because they are appointed by officials who endorsed a particular candidate. He said to the reporter that he did not ask these Commissioners to recuse themselves because he trusted that they would properly apply the law and vote with their conscience. He stated that he intended to compliment the commissioners.

Mr. Marsteller commented that the Ethics Commission is a panel of quasi-judicial authority that has a high standard of conduct and should commit collectively to proper decorum.

Commissioner Anglade stated that she is fully in support of full political debate but that she felt that direct and personal comments were made inappropriately. She asked the Commission to differentiate between personal attacks and criticism that stems from policy discussion among Commission members. Vice-chairperson Garcia stated that it is one thing to question one's judgment and another to question one's character and intent.

Chairperson Planthold agreed that it would help to have guidelines in terms of expressing private personal thoughts of disagreement to the public. He asked Commissioner McCoy to draft something on this topic for consideration at a future meeting.

XI. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings.

Vice-chairperson Garcia asked that the Commission consider the proper relationship between a commission member and his or her appointing authority.

Commissioner Anglade asked that the Commission consider revision to the Code of Conduct. Chairperson Planthold asked the members to let him know of their availability for a possible special meeting on the budget.

Mr. Pilpel requested that the Commission prepare a list of items that had been previously raised for discussion. Chairperson Planthold and Vice-chairperson Garcia asked that staff prepare a list of agenda items suggested at today's meeting and previous meetings.

XII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

Chairperson Planthold announced that there would not be a closed session.

XIII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: pending litigation.

Because there was no closed session, Item XIII was rendered moot.

XIV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

XIII. Adjournment.

Motion 03-12-08-12 (Lynn/Garcia): Moved, seconded, and unanimously passed

(5-0): That the Commission adjourn its meeting.

The meeting was adjourned at 9:21 p.m.

Respectfully submitted,

_____

Grace Chau

Public Finance Auditor

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